TRUCKING DEREGULATION: IS IT HAPPENING?

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JOINT ECONOMIC COMMITTEE
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TRUCKING DEREGULATION: IS IT HAPPENING?

TUESDAY, NOVEMBER 17, 1981

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Henry S. Reuss (chairman of the committee) presiding.

Present: Representatives Reuss and Wylie.

Also present: James K. Galbraith, executive director; Louis C. Krauthoff II, assistant director; and Mark Bisnow, Chris Frenze, and Richard Vedder, professional staff members.

OPENING STATEMENT OF REPRESENTATIVE REUSS, CHAIRMAN

Representative Reuss. Good morning. The Joint Economic Committee will be in order for a hearing on the regulation and deregulation of trucking.

The Reagan administration came to office pledged to a philosophy that had broad appeal and wide support. The new administration pledged, among other things, to fight inflation, to end costly and unnecessary regulations which would foster greater competition, to promote free markets, and to permit small businesses to prosper.

President Reagan, in August 1980, during his campaign, strongly endorsed further progress toward the elimination of regulation of the trucking industry. In a letter to the American Farm Bureau Federation, he criticized the Carter years as having moved too slowly. He said, and I quote, "The record of the Carter administration in the field of trucking has been one of overregulation and delay. Our objective will be to deregulate and revitalize the entire transportation system—rail, trucking, * * * swiftly."

Since then, however, questions have arisen concerning the depth of the administration's commitment to free markets and deregulation in the case of trucking. Some observers believe that the Interstate Commerce Commission has slowed and even reversed the progress that was previously underway. Today we have an opportunity to examine the facts.

Before introducing today's witnesses, I would like to mention that Representative Rousselot and Senator Hawkins, although unable to attend today, have requested that their opening statements be included in the printed record, which I will do at this point, without objection.

[The opening statements of Representative John H. Rousselot and Senator Paula Hawkins follow:]

Opening Statement of Representative Rousselot

The Motor Carrier Act of 1980, Public Law 96–296, reduces the authority of the Interstate Commerce Commission to regulate the trucking industry with respect to entry and price fixing. While requiring licensed truckers to be "fit, willing, and able to provide transportation," the act replaces one-way permit authorization with roundtrip authorization to enable truckers to carry goods on the return trip. The act enables trucking firms to set their own prices as long as the price change is no more or no less than 10 percent each year. The Motor Carrier Act of 1980 represents a major stride in removing the Federal Government from the private sector, and on June 19, 1980, I voted for its passage.

Both the consumer and the trucking industry benefit from deregulation. Free entry and flexible prices enable consumers to purchase transported goods at the lowest cost. Furthermore, the trucking industry remains competitive with other modes of transportation when truckers are able to offer new routes and establish new prices to reflect new costs.

Free markets provide low costs and work; regulated markets cause shortages and surpluses. When private producers are bound by Government price-fixing decree to fares below the price of profitable transport, trucking firms do not accept consumer orders. When transportation charges are set by a Government agency above the price of profitably transporting the goods by truck, consumers place fewer orders and take their business to other types of transportation.

Free entry is necessary to provide new suppliers and additional employment in vital industries such as trucking. Licensing requirements and route restrictions enable existing suppliers to exert monopoly influence. Without competition, markets can not provide low prices, consumer choice, and competitive world-class production.

Opening Statement of Senator Hawkins

Federal regulatory activity has had a significant share in the inexorable increase in Fededal Government domination over our Nation's resources. In the past 15 years, the regulated sector of the economy has increased in size from roughly one-tenth to about one-fourth of gross national product.

The regulatory mandates which have driven this extraordinary growth impose both direct and indirect costs on America's economy. Available evidence suggests that direct compliance costs exceed $100 billion yearly. In addition, indirect costs—such as reduced output, inhibited employment opportunities, and retarded productivity growth—involve substantial costs.

Let me illustrate just how costly regulation has been to all Americans with the example of the "transportation and logistics" component of gross national product. In a $3 trillion economy, the component comprising transportation, warehousing, inventory, and attendant administrative functions accounts for about $600 million, or about 20 percent of total gross national product. According to a recent study by the National Council of Physical Distribution Management, over 75 percent of the firms in their study have yet "to begin meaningful programs aimed at logistics." if only a 10 percent productivity improvement in productivity and efficiency could be achieved in the logistics sector of the economy, the study estimated that over one-half trillion dollars in new capital could be generated in the 1980's. Much of the responsibility lies with management; however, some of the accumulated disincentive to innovate is the fault of Government overregulation.

Productivity improvement is the key to business profitability and to the generation of capital for the modernization of U.S. industry. For too long regulation has played a role in slowing productivity growth.

We recognize that segments of the transportation industry have been regulated for many years. As a consequence, careful and considered measures are necessary as the shackles of Government are removed. But the shackles must come off.

Representative Reuss. Our distinguished witnesses are: Alfred Kahn, former Chairman of the Civil Aviation Board and of the President's Council on Wage and Price Stability, an expert on deregulation and on anti-inflation policy, and now a Robert Julius Thorne, professor of economics at Cornell University; Thomas Gale Moore, a senior fellow of the Hoover Institution and a close student of trans-

portation economics; Marcus Alexis and Thomas A. Trantum, former members of the Interstate Commerce Commission; and Hon. Reese Taylor, present Chairman of the ICC.

Mr. Taylor is testifying before another committee and will join us presently, but let us start our examination. We'll call first on Mr. Alfred Kahn who served the Nation so well during the last administration. We are particularly happy to have him back. Mr. Kahn.

STATEMENT OF ALFRED E. KAHN, ROBERT JULIUS THORNE PROFESSOR OF ECONOMICS, CORNELL UNIVERSITY

Mr. KAHN. Thank you very much, Mr. Chairman. It really is a delight to be back here and have an opportunity to talk to you, especially since I'm not having to report on the latest monthly movement of the CPI.

I appear before you today far more in anger than in sorrow. I'm not sad; I'm mad. Sad implies a resigned acceptance of what they're doing; mad is more vigorous stuff, and, indeed, I find it difficult to believe that this committee's reaction is not going to be vigorous as well.

In my last years in the White House as adviser to President Carter on inflation, my staff and I devoted a large share of our energies to regulatory reform generally, and, most prominently and in particular, to the passage of the Motor Carrier Act of 1980. Although we certainly did not get everything we wanted in the bill, it was nevertheless one of the proudest and—we had every reason to believe—most enduring achievements of the Carter administration, precisely because it was intended to effect the kind of structural reform of our economic institutions to which, as you have yourself so often emphasized, Mr. Chairman, we must look for the long-run resolution of our national stagflationary dilemmas.

I do not claim this credit in a partisan spirit. I remind you that the active movement to deregulate the transportation industries began under President Ford; and that we could not possibly have gotten the 1980 reforms enacted had it not been for Republicans like Bob Packwood, along with Democrats like Howard Cannon, Ted Kennedy, and Jimmy Carter—not to mention the active support of citizen groups ranging from the National Federation of Independent Businesses and the National Association of Manufacturers to Common Cause, The Public Citizen, and The Consumer Federation of America.

Although, as I say, we were far from wholly satisfied with the bill we got, its general intentions were entirely clear. The June 3 Report of the House Committee on Public Works and Transportation on the bill that became law 27 days later characterizes the committee's effort as "aimed at increasing competition and reducing unnecessary Federal regulations * * *." The act has a single sentence statement of purpose: "This Act is part of the continuing effort by Congress to reduce unnecessary regulation by the Federal Government." It amends national transportation policy by adding the purpose "to promote competitive and efficient transportation services * * *."

And lest there be any misunderstanding about the relative reliance that was to be placed, in achieving that efficiency goal, on free competition on the one side and ICC determinations on the other as to who should have the right to serve whom, with what and where, the first

substantive provision of the act says the ICC shall issue operating licenses to all applicants it finds fit, willing, able, and offering to provide a useful public service unless it positively finds that the transportation in question will be inconsistent with the public convenience and necessity—a clear shift of the historic burden of proof and responsibility from the ICC to competitive enterprise. And its next substantive section directs the systematic relaxation or elimination of the infinitely detailed protectionistic restrictions historically attached by the ICC to carriers' operating rights.

While I am prepared to argue the merits of trucking deregulation—an issue that I thought had by now been settled a long time ago intellectually—by people like Professor Moore, I might add—with anyone that still wants to do so, I confess I have not had the opportunity to follow the fortunes of the trucking industry or the course of ICC policy in any detail since the 1980 reforms were enacted. So far as I have been able to observe them, however, the results in the market have been what we expected—more price competition, lower rates, availability to the public of a wider range of price and service options, downward pressures on inflated wages, and better service.

So far as the ICC is concerned, I am aware that under its able former Chairman, Mr. Darius Gaskins, with the strong support of Commissioners Tad Trantum and Marcus Alexis—one Republican and one Democrat—that agency proceeded vigorously in 1980 under the new act to restore the industry to the free enterprise system. The public has every reason to be concerned that today none of those three remains on the Commission: All have left without completing their terms.

The public—and Congress—have even more reason to be upset that President Reagan chose to replace Mr. Gaskins with a Chairman who enjoyed the active support of the American Trucking Association and the Teamsters, both of them opponents of genuine regulatory reform; that he proceeded to appoint to key staff positions people who had taken public positions directly hostile to deregulation and freer competition in the transportation industries, and that the newly constituted Commission began in a series of decisions to interpret its mandate under the amended act in a more protectionist, anticompetitive manner than its predecessor.

I am not in a position to contend, nor do I contend, that they have abused their discretion in the legal sense. The law still leaves a great deal of discretion to the administrative agency. What I do perceive is a clear conflict between their policies and the bipartisan tradition out of which the present bill emerged, not to mention the proclaimed faith of the Reagan administration in free competitive enterprise. Make no mistake about it, these people are regulators and cartelizers, with a capital R and a capital C.

I am anxious not to be unfair—though not excessively so—all the more so since I have not, as I say, studied the ICC's recent policies in any detail, and there is surely room for differences of opinion about the legal issues it has had to confront. I have, however, read enough of its recent decisions to see clear evidences of retreat from free market principles—tendencies to define operating authority more closely, to require more thorough and precise attestations from shippers of the need for all of the requested authority, the tendency to restrict pricing

flexibility and—especially ominous—to place increasingly heavy emphasis on the fitness, willingness, and ability of an applicant actually to offer on demand and on a common carrier basis all the service described in the operating authority it seeks—as a condition for giving it the authority. Please observe this. The essence of a competitive regime, in contrast, is that anyone is legally free to enter and serve any market, at his or her discretion, only when and as in his or her unfettered judgment, the market seems to justify doing so—what we at the CAB called the doctrine we developed, "multiple, permissive authority."

I am satisfied that those generalizations are fair; on the other hand, I observe with relief that the witnesses who follow me—the aforementioned Messrs. Alexis and Trantum—are far better qualified than I to discuss their merits, and, being familiar with their intellectual convictions, I am happy to defer, sight unseen, to their judgments of what is going on.

My only contribution, if any, is to convey to you some sense of the intellectual and legislative background of the Motor Carrier Act of 1980, to stand ready to take on anyone who may still wish to argue directly against deregulation and free competition in this industry, and to convey to you a fine indignation that these other gentlemen might think it unseemly for them to express. Thank you, Mr. Chairman.

Representative REUSS. Thank you, Mr. Kahn. You have expressed this morning an emotion which is too little seen in Washington, but for which there is, in my view, more than ample justification.

We'll now hear from former Commissioner Thomas A. Trantum, who is now senior vice president of L. F. Rothschild, Unterberg, Towbin, and former Republican member of the Interstate Commerce Commission until his recent resignation.

I might say that Mr. Trantum and the other witnesses have provided the committee with compendious prepared statements which, under the rule and without objection, will be received in full. Would you proceed in whatever way is congenial to you.

STATEMENT OF THOMAS A. TRANTUM, SENIOR VICE PRESIDENT, L. F. ROTHSCHILD, UNTERBERG, TOWBIN, BETHESDA, MD.

Mr. TRANTUM. Thank you, Mr. Chairman.

Sitting here this morning I am reminded of the last time I testified before Congress. On that occasion I argued for a $29 million budget reduction for the Interstate Commerce Commission to the $50 million level in fiscal year 1982. I felt a strong case could be made that the $29 million was spent on unnecessary regulatory activities that went far beyond the agency's statutory mandate. Since I was apparently unsuccessful in that effort, I must confess a degree of skepticism at my powers of persuasion. Being a relentless optimist, however, I appreciate your invitation to appear today and present my perspective on the current state of motor carrier regulatory reform.

I am not here today to criticize recent ICC actions. To do so would merely underscore the wide discretionary powers that Congress gave the ICC in administering surface transportation regulation. The degree of competitive freedom permitted is frequently judgmental;

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either a narrow or broad interpretation can usually be upheld if challenged.

To add further confusion, there are substantial differences between the Staggers Rail Act and the Motor Carrier Act in terms of degrees of deregulation that are intended. Congress went substantially further with rail than truck deregulation although one might intuitively believe the reverse to be more appropriate. For example, the Staggers Act abolishes railroad antitrust immunity on single-line rates, permits 10-day notice of rate reductions, and 20-day notice of rate increases and directs the ICC to exempt all competitive railroad services from regulation. In contrast, elimination of antitrust immunity on single-line motor carrier rates is subject to further study, and 30-day notice is required for all rate changes. Moreover, the Commission has not been given exemption authority to eliminate trucking regulation where competition is clearly sufficient to protect the public interest.

During my remaining time, I would like to focus on the reality of regulatory reduction and not debate the speed of deregulation.

In a rigid regulatory environment, the ICC diverts shipper and carrier attention to itself and away from the business of commerce. The pricing structure is so arcane and inefficient that over 5,000 times each year motor carrier and shipper (seller and buyer) approach the agency with the question: "What was the deal we made with each other?" It is totally absurd that two willing parties to a business transaction should need a Government agency to tell them what the price was after the transaction is completed. Regulation tends to cloud shipper perceptions of specific transportation requirements, and prevents a quick carrier response to those needs. By its very existence, regulation aggravates supply-demand imbalances and stimulates inefficiency. To some carriers, learning and manipulating the regulatory system to achieve competitive advantage becomes a primary objective, rather than satisfying the needs of shippers in the most efficient way.

Substantial structural changes have occurred since enactment of the Motor Carrier Act of 1980. Entry restrictions have eased considerably and carrier managements have generally responded to more competition by offering shippers an expanded number of price-service options. Shippers have been somewhat surprised at the results. They indicate that service availability is as good or better than previously, and that motor carriers are more willing to offer volume or cost-related discount freight rates. Most importantly, both carrier and shippers are aggressively exploring new business opportunities. Today a massive search is on for greater productivity and expanded market penetration. As part of this effort, even the Teamsters have agreed to an early negotiation of the master contract which doesn't expire until next year.

What's ahead? The new statute and the implementation effort have had an enormous impact in the marketplace. Shippers and carriers have responded to the new freedoms far beyond even my expectations. I believe the emerging environment is one in which the transportation community will seek even more freedoms, rather than reverting to regulatory upsmanship as a way to gain an artificial competitive advantage.

The number of beneficiaries of deregulation expands with every grant of route authority, independent rate action, contractual agree-

ment, service adjustment and efficiency improvement. The industry is now demonstrating its wealth of vitality by responding to greater competitive pressures in a recession environment without substantial financial reversals.

I am confident that the ICC as well as the administration will be sensitive to and supportive of this emerging consensus. I have stated many times that the experience in reducing transportation regulation is perhaps the best example of how supply-side, incentive-oriented economics works as a practical matter. The evidence that deregulation does release powerful incentives leading to greater efficiency and responsiveness in the marketplace is simply overwhelming. It has been 16 months since the Motor Carrier Act of 1980 was passed. During this time the Dow Jones Industrial Average has dropped 2 percent while a group of 20 trucking stocks have increased over 20 percent. The implication is clear that Wall Street likes what it sees in motor carrier deregulation.

In closing, I will repeat a public position I took prior to the passage of the Motor Carrier Act of 1980. Congress should sunset all ICC motor carrier regulatory activities with the exception of safety and insurance. This would eliminate whatever confusion that may exist as to congressional intent, as well as accurately reflect the growing realization that there is no place in our economy for regulations in areas where competition can better safeguard the public interest.

I would like to mention one additional development. The Multi-Employer Pension Plan Amendments Act of 1980 made a partially or wholly withdrawing employer immediately liable for up to 100 percent of its net worth. Previously, withdrawal liability was limited to 30 percent of net worth over a period of time. In effect, the Amendments Act has made it very difficult for carriers to transfer assets, as well as move facilities from one area to another. As such, carriers face a new barrier in adjusting to market circumstances contrary to the intent of the Motor Carrier Act of 1980. I, therefore, urge Congress to review this matter and search for a solution that is fair and reasonable to corporations as well as to employees covered by these plans.

I appreciate the interest of the Joint Economic Committee in transportation. Moreover, I am confident that both Congress and the administration will take whatever measures are necessary to make the needed improvements to our transportation system.

Representative REUSS. Thank you very much, Mr. Trantum.

And now we'll hear from Mr. Thomas Gale Moore, senior fellow, Hoover Institution, Stanford University at Palo Alto.

STATEMENT OF THOMAS GALE MOORE, SENIOR FELLOW, HOOVER INSTITUTION, STANFORD UNIVERSITY

Mr. MOORE. Thank you very much.

It is a great honor to be here today to testify on a subject of such importance. I plan to summarize my prepared statement this morning.

Let me start by saying that the Motor Carrier Act of 1980 is a great step forward and I congratulate both Alfred Kahn and the Congress for having gotten it through. The difficulty with it is that it is subject, as any regulatory act is, to various interpretations, and we have seen

over the last 12 to 18 months two different interpretations of how that act should be implemented.

The dispute between the previous commissioners and the current ICC commissioners is over the interpretation of the act and revolve around the questions of the desirability of motor carrier regulation.

I think the lesson to be drawn from this is that unless the Congress is clear and abolishes regulation of motor carriers, there's always going to be room for interpretation to bring back regulation.

I'd like to this morning start off by reviewing the desirability of regulation and, in doing this, let me start with the origins of Government controls of this industry.

The regulation of railroads led inevitably to the regulator of motor carriers which offer competing service. This regulation, in turn, led to regulation of other areas of trucking which didn't compete directly with railroads but did compete with motor carriers that did compete with railroads.

In the early part of this century, railroads were usually the only or chief group urging that motor carriers be subject to regulation. Support from other sectors was nonexistent. There's no evidence that either the public or shippers were concerned about unregulated trucking.

Let me talk a minute about my own State, California, which is reasonably typical. During the summer of 1915, the Western Association of Short-Line Railroads filed a petition contending that the Railroad Commission had jurisdiction over motor bus lines, auto truck lines, or auto stage lines engaged in the business of transporting freight for compensation.

The Commission declined to take jurisdiction, claiming that while such motor carriers were common carriers under common law, they were not common carriers as applied by the Public Utilities Act. The California Supreme Court overturned the Commission and held that the motor carriers were subject to regulation.

The Railroad Commission went to the State legislature and got a new law. This act provided for the regulation as public utilities of all companies that engaged in the transportation of persons or property as common carriers between fixed termini or over a regular route. Now this definition restricts regulation to just that transportation which is competitive with railroads and not the irregular route carriers. Nowhere in this record was there any evidence that regulation was necessary to protect the shipping public from exploitation.

The main pressure for Federal regulation came from State public utility commissions, the Interstate Commerce Commission, and rail carriers. Again, nothing from the public.

As late as November 1934, the trucking industry was opposed to regulation. It's worth quoting from a signed memorandum from the trucking industry that was sent to President Roosevelt. Let me quote to you one section.

> The demand for Federal regulation of rates and practices of interstate motor transport is primarily of railroad origin and is "an ill-advised effort to turn back to the railroads that small portion of business they have lost by reason of more expeditious and more economical truck and bus services."

Another thing they said in their memorandum was that "the restriction of highway transportation services would result in a great increase

in the cost of transportation of passengers and commodities." That's what the trucking industry claimed.

This history of trucking regulation as a result of protection of the railroads is true not only in the United States but around the world and, as in the United States, trucking regulation has failed to protect the railroads.

In 1963, the Conservative Government of Great Britain appointed a committee to examine the licensing of trucking in that country. The committee's main finding is again worth quoting.

> Neither the present system of licensing nor any variant of it based on control of the number of lorries and restriction of what lorries may carry offers a useful way to achieve what we think might be the main aims of government policy in regulating carriers of goods by road. In three respects such licensing acts adversely. It reduces efficiency. It tends to confer positions of privilege. And it tends to add to congestions on the roads.

The effect of regulation of motor carriers has been exactly that predicted in the memorandum to President Roosevelt signed by the American Trucking Association.

Numerous studies have shown the trucking regulation inflates rates and it also reduces efficiency.

In 1974, for example, the ICC rejected the application of Consolidated Freightways Corp. to reduce the mileage between Minneapolis and Dallas by 377 miles. The Commission refused to grant the authority because it would save 1 day in transit and thus change the competitive structure, leaving the very inefficient system in place.

The existing Commission is continuing this practice. Though the Motor Carrier Act of 1980 was intended to eliminate inefficiencies, the Commission, under Chairman Reese Taylor, has been restricting grants of new authority to those points and those products alone for which the applicant can show shipper support. For example, a trucker, Hagen, Inc. of Sioux City, Iowa, applied for authority to haul general commodities nationwide. It asserted that a 50-State grant would allow it to consolidate its numerous and fragmented authorities. In September, 2 months ago, the Review Board of the ICC granted authority only for "transporting essentially the traffic of those shippers at the points or facilities where shippers demonstrate a need for service." For example, Hagen was restricted to hauling chemicals between Terra Chemicals International, Inc., at points in 17 States and other points in the United States. Other similarly limited authority was granted. The Board's actions fell far short of the 50-State grant which would have increased the efficiency of the Hagen system and would have been consistent with the Motor Carrier Act of 1980.

As the British committee found, regulation confers positions of privilege. In the United States this has meant that the certificates of public convenience and necessity issued by the ICC have had a high market value. The American Trucking Association, Inc. asserted, in 1974, that the amount paid for operating authorities was equal to between 15 and 20 percent of the annual revenue produced by those authorities. A study of the market value of these certificates which I conducted confirmed their report. In my article, I also estimated that the total monopoly profits received by the owners of the operating rights was between $1.5 billion and $2 billion in 1972 dollars.

After the passage of the Motor Carrier Act of 1980, and the implementation of a new liberal entry policy, however, the value of operat-

ing rights fell to zero. I understand, unfortunately, the certificates once again have a market value. The new Commission has been so restrictive that some carriers feel it necessary to purchase operating rights from existing carriers.

Finally, let me point out that motor carriers can operate perfectly well without Government regulation. Trucking is a naturally competitive industry. Farm interests and the Department of Agriculture have consistently found that unregulated trucking gives them better service at lower rates than exist in the regulated environment. Most of the trucking industry has been free from State regulation in New Jersey; more recently Florida has deregulated trucking with no adverse effects. Several Provinces of Canada have no significant regulation of motor carriers. Great Britain deregulated trucking in the early 1970's and rates, after adjusting for inflation, declined, while service improved. Australia has had an unregulated motor carrier industry for decades.

In the short period since trucking was partially deregulated, rates have fallen, especially for truck-load shipments. The Wall Street Journal reported that the results of deregulation were: "discounted rates, more truckers, improved service, service innovations and more Teamsters Union concessions." According to a Harbridge House, Inc. survey of 2,200 manufacturers, 23 percent were enjoying lower rail charges since deregulation, but nearly 3 times as many, 65 percent, were obtaining the benefit of lower trucking rates.

I would conclude by urging the Congress to finish the job of deregulating the trucking industry. The original reason for regulating it, to protect the railroads, has long since disappeared. Regulation protects only the inefficient carrier; it creates waste, promotes monopoly, and raises costs. The attempt by the existing Commission to reinstitute controls, to limit entry whenever possible and to discourage price competition shows that the public is best protected by abolishing Federal control over motor carriers. Thank you.

[The prepared statement of Mr. Moore follows:]

Prepared Statement of Thomas Gale Moore

It is a great honor to be here today to testitfy on a subject of such importance. Today you will hear from some witnesses who, like myself, believe that the government can play no useful role in regulating the trucking industry. Others will support continued controls. In the main the dispute between the previous and current ICC commissioners over the interpretation of the Motor Carrier Act of 1980 revolves around the question of the desirability of motor carrier regulation.

In reviewing the advisability and necessity of trucking regulation, it is helpful to explore the origins of government controls of this industry. Once we are clear concerning the objectives of government regulation, we can examine the relative benefits of maintaining or lessening such controls.

Regulation begets regulation. The regulation of railroads

led to the regulation of those motor carriers which offered competing services. This regulation in turn led to the extension of control over other areas of trucking, which competed with the regulated portion of motor carriage, although they did not compete directly with railroads.

The Advent of Regulation

Like a trailer following the cab, so regulation followed the invention of the truck. In 1914, just ten years after Packard, Studebaker, Reo, Maxwell, and Cadillac introduced commercial vehicles, Pennsylvania and Illinois became the first states to assert jurisdiction over motor carriers. Neither of these states enacted new legislation; instead after receiving petitions from railroads, the state regulatory commissions simply claimed jurisdiction. Several other states initiated regulation without passing new legislation: Georgia (1915), Maryland (1915), Arizona (1922), and Texas (1925).[1] Colorado (1915), New York (1915), Wisconsin (1915), California (1917), and Utah (1917) all enacted new legislation prior to World War I that brought motor common carriers under some form of control. With the exception of New York and Wisconsin, which regulated only carriers of passenger, regulation was imposed on carriers of both property and passengers. By 1930 all but two states, Delaware and Nebraska, had extended varying degrees of control over motor carriers.

Those states that imposed regulation without specific new

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1. Donald V. Harper, Economic REgulation of the Motor Trucking Industry by the States (Urbana: The University of Illinois Press,
(Footnote continued)

legislation based it on regulatory commission interpretations or court interpretations of existing law. Often the law had been drawn loosely to encompass all common carriers by which the legislature meant railroads and express companies.

Railroads in these states were usually the chief or only litigants claiming that motor carriers should be subject to control. Support from other sources for regulation was minimal. There is no evidence that either the public or shippers were concerned about unregulated trucking. Some motor carriers supported regulation. A few distributors and dealers who depended mainly on railroad connections did apparently support regulation to prevent or slow down change. All major economic change disrupts certain business relations. The advent of motor carriers lowered transportation costs and expanded markets. While consumers gained and some firms benefited, others lost. Those that faced new competition due to trucking supported efforts by the railroads to suppress the expansion of motor carriage.

The development of regulation in California is reasonably typical. Under the 1879 California constitution the Railroad Commission received authority over rates and accounts of railroads "or other transportation companies." In 1911 the voters amended the constitution to create a five member commission with jurisdiction over all railroad, canal, and other transportation companies and all commmon carriers. In the implementing

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1. (continued)
1959) p. 33.

legislation, motor carriers were only mentioned incidentlally in two places. During the summer of 1915, the Western Association of Shortline Railroads filed a petition contending that the Railroad Commission had jurisdiction over "motor bus lines, auto truck lines, or auto stage lines engaged in the business of transporting freight for compensation for the general public over regular routes."[2] The Commission declined to take jurisdiction, claiming that, while such motor carriers were common carriers under common law, they were not "common carriers" as defined in the Public Utilities Act. In the following year the California Supreme Court overturned the Commission's ruling and concluded that, under the California constitution, motor carriers were "other transportation companies" and that the Commission must exercise jurisdiction.[3]

The Railroad Commission evidently felt the need for legislation to guide its regulatory activity of motor carriers. After consulting with both railroad and automobile interests the Commission presented a bill which was enacted into law. This act provided for the regulation as public utiliites of all companies engaged in the "transportation of persons or property as a common carrier for compensation over any public highway in this state between fixed termini or over a regular route and not operating exclusively within the limits of an incorporated city or

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2. Western Association of shortline Railroads v. Wichita Transportation Co., 8, C.R.C. 220, 221 (1915).

3. Western Association of shortline Railroads v. Railroad Commission 173 Cal. 802 (1916).

town..."[4] This definition restricted regulation to those carriers that competed most directly with railroads. Clearly, those that operated between fixed termini were those likely to parallel rail lines. Those that operated over a regular route offered services comparable to rail transit.

The origins of regulation in other states appear to be quite similar. Pressure from railroads, coupled with support from some motor carriers, especially bus companies, led to regulatory legislation. There was also scattered but not negligible support from firms and industries suffering disruption from the introduction of the motor vehicle. Nowhere in the record is there any evidence that regulation was necessary to protect the shipping public from exploitation.

Up to 1925 most states and most observers believed that the states had the power to control interstate traffic within the state. In that year, two cases reached the U.S. Supreme Court that eliminated the authority of the states to control interstate carriers.[5] The Supreme Court held in these cases that requiring an interstate carrier to secure operating authority from a state prior to operations was an unconstitutional interference with interstate commerce. These decisions effectively eliminated control by the states.

Following these decisions the National Association of Railroad and Utility Commissioners appointed a committee to draft a

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4. Cal. Stats. 1917 c. 213 1(c).

5. Buck v. Kuykendall 267 U.S. 307 (1925) and Bush and Sons and Company v. Maloy 267 U.S. 317 (1925).

bill for federal regulation of interstate motor carriers. This bill, introduced into Congress in 1926, was supported by bus operators but opposed by truckers. Because of motor carrier opposition bills to regulate interstate trucking continued to fail until 1935. The main pressure for regulation came from state public utility commissions, the Interstate Commerce Commission, and rail carriers. The latter carried on extensive public relations campaigns and lobbying efforts to secure federal regulation. Lined up against regulation were shippers, most freight motor carriers and vehicle manufacturers. The Emergency Transportation Act of 1933, however, increased the visibility of the proponents of federal controls. It created the post of Federal Coordinator of Transportation and Joseph B. Eastman, an ICC member, became Coordinator. In his report he pointed to the bitter competition within the trucking industry and between motor carriers and rail carriers. He concluded that many rail lines were being forced into bankruptcy due to the "cutthroat" competition in the trucking industry.

As late as November, 1934, the trucking industry was opposing regulation. Ted V. Rodgers, President of the American Trucking Associations, Inc., signed a memorandum to President Roosevelt opposing government controls. The memorandum said in part:

> ...it was decided that a special committee be appointed to call on President Roosevelt and place before him the reasons why the highway-using public, farmers, shippers, producers, bus and truck operators and numerous affiliated industries and organizations are opposed to additional Federal regulation of interstate motor transport at this time. ...
>
> 3. That the demand for Federal regulation of rates and

practices of interstate motor transport is primarily of railroad origin and is "an ill-advised effort to turn back to the railroads that small portion of business they have lost by reason of more expenditious and more economical truck and bus services." ...

5. That the restriction of highway transportation services would "result in a great increase in the cost of transportation of passengers and commodities and would add to the delivery costs of millions of producers and consumers, which the business of the country can ill afford at this time."

Trucking regulation therefore developed to protect the railroad industry from competition. It has failed in its objective. Railroads have lost considerable traffic to motor carriers. Passenger have long since abandoned railroads for aircarriers, private cars, and buses. Railroads themselves no longer actively oppose trucking deregulation.

British Government Report

In other parts of the world as well as in the United States, motor carrier regulation was imposed in order to protect the traffic of railroads. There, too, it has failed. In 1963, the Conservative Government of Great Britain appointed a Committee to examine the existing system of licensing trucking. That Committee's main finding is worth quoting:

> Neither the present system of licensing nor any variant of it based on control of the number of lorries and restriction of what lorries may carry offers a useful way to achieve what we think might be the main aims of government policy in regulating carriage of goods by road. In three respects such licensing acts adversely. It reduces efficiency. It tends to confer positions of privilege. And it tends to add to congestions on the roads.[6]

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6. Great Britain, Ministry of Transport, Report of the Committee on Carriers' Licensing, p. 1.

The Effects of Regulation

The effect of motor carrier regulation has been exactly that predicted in the memorandum to President Roosevelt. Regulation has raised the cost of transportation of commodities and thus the final price of goods. The British government's findings are also applicable to the United States. Regulation has reduced efficiency. It has also conferred positions of privilege.

Numerous studies have shown that trucking regulation inflates rates[7] and reduces efficiency. In the past ICC control has limited the rights of carriers to haul goods on the return trip. It has required truckers to go miles out of their way, in some cases increasing transit time by a day or more. For example, in 1974, the ICC rejected the application of Consolidated Freightways Corporation to reduce the mileage between Minneapolis and Dallas by 377 miles. The Commission refused to grant the authority because it would save one day in transit and thus change the competitive structure.

The existing Commission is continuing this practice.

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7. See for example, J.R. Snitzler and K.J. Byrne, Interstate Trucking of Fresh and Frozen Poultry under Agricultural Exemption, Marketing Research Report No. 224, (Department of Agriculture, 1958); Snitzler and Byrne, Interstate Trucking of Frozen Fruits and Vegetables under Agricultural Exemption, Marketing Research Report No. 315 (Department of Agriculture, 1959); James Sloss, "Regulation of Motor Freight Transportation: A quantitative Evaluation of Policy," The Bell Journal of Economics and Management Science, (Autumn 1970), pp. 327-66; U.S. Congress, House, Committee on Interstate and Foreign Commerce, Statement of the National Broiler Council, Hearings, before the Subcommittee on Transportation and Aeronautics, on the Transportation Act of 1972, 92nd Cong., 2nd sess., 1972, p. 1434; Thomas Gale Moore, Trucking Regulation: Lessons from Europe, (American Enterprise

(Footnote continued)

Though the Motor Carrier Act of 1980 was intended to eliminate inefficiencies, the Commission, under Chairman Reese Taylor, has been restricting grants of new authority to those points and those products alone for which the applicant can show shipper support. For example, a trucker, Hagen, Inc. of Sioux City, Iowa, applied for authority to haul general commodities nationwide. It asserted that a fifty-state grant would allow it to consolidate its numerous and fragmented authorities. In September the Review Board of the ICC granted authority only for "transporting essentially the traffic of those shippers at the points or facilities where shippers demonstrate a need for service." For example, Hagen was restricted to hauling chemicals between Terra Chemicals International, Inc., at points in seventeen states and other points in the U.S. Other similarly limited authority was granted.[8] The Board's actions fell far short of the fifty state grant which would have increased the efficiency of the Hagen system.

As the British committee found, regulation confers positions of privilege. In the United States this has meant that the certificates of public convenience and necessity issued by the ICC have had a high market value. The American Trucking Associations, Inc. asserted, in a 1974 brief filed with the Financial Accounting Standards Board, that the amount paid for operating authorities were equal to between 15 and 20 percent of the annual

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7. (continued)
Institute & Hoover Institution, 1976).

8. MC-127042, Sub. 304, Hagen, Inc., Extension - General
(Footnote continued)

revenue produced by those authorities. A study of the market value of these certificates which I conducted confirmed their report.[9] In my article, I also estimated that the total monopoly profits received by the owners of the operating rights was between $1.5 billion and $2 billion in 1972 dollars. A more recent study by James Frew confirms my findings that the value of these authorities reflect large monopoly profits.[10]

After the passage of the Motor Carrier Act of 1980 and the implementation of a new liberal entry policy, however, the value of operating rights fell to zero. Since new authority could be secured readily from the Commission there was little point in paying thousands of dollars for existing rights. I understand, unfortunately, that certificates once again have a market value. The new Commission has been so restrictive that some carriers feel it necessary to purchase operating rights from existing carriers. In other words, the ICC has again created monopoly profits in the industry.

Finally let me point out that motor carriers can operate perfectly well without government regulation. Trucking is a naturally competitive industry. Within the United States the carriage of agricultural products has always been exempt from regulation. Farm interests and the Department of Agriculture

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8. (continued)
Commodities, Nationwide.

9. "The Beneficiaries of Trucking Regulation" The Journal of Law and Economics, October 1978, pp. 327-343.

10. "The Existence of Monopoly Profits in the Motor Carrier Industry" The Journal of Law and Economics, October 1981, pp. 289-316.

have consistently found that unregulated trucking gives them better service at lower rates than would exist in a regulated environment. Most of the trucking industry has been free from state regulation in New Jersey; more recently Florida has deregulated trucking with no adverse effects. Several provinces of Canada have no significant regulation of motor carriers. Great Britain deregulated trucking in the early 1970s and rates, after adjusting for inflation, declined, while service improved. Australia has had an unregulated motor carrier industry for decades.

In the short period since trucking was partially deregulated, rates have fallen, especially for truck-load shipments. Service to small communities has improved and complaints by shippers have declined. Improved service and lower rates by for-hire carriers have led to a decline in private carriage.[11] The Wall Street Journal reported that the results of deregulation were: "discounted rates, more truckers, service, service innovations and more Teamsters Union concessions on work rules.[12] According to a Harbridge House, Inc. survey of 2,200 manufacturers, 23 percent were enjoying lower rail charges since deregulation, but nearly three times as many, 65 percent, were obtaining the benefit of lower trucking rates.[13]

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11. Statement of Marcus Alexis, Acting Chairman Interstate Commerce Commission, Before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation on The Motor Carrier Act of 1980, June 10, 1981, pp. 3, 4, 11, and 12.

12. The Wall Street Journal, June 30, 1981, p. 30.

I would conclude by urging the Congress to finish the job of deregulating the trucking industry. The original reason for regulating it, to protect the railroads, has long since disappeared. Regulation protects only the inefficient carrier; it creates waste, promotes monopoly, and raises costs. The attempt by the existing Commission to reinstitute controls, to limit entry whenever possible and to discourage price competition shows that the public is best protected by abolishing federal control over motor carriers.

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13. Ibid.

Representative REUSS. Thank you, Mr. Moore.

We will now hear from Mr. Marcus Alexis, member of the Interstate Commerce Commission until his resignation last July, and presently professor of economics at Northwestern University. We are delighted to have you here and you may proceed in your own way.

STATEMENT OF MARCUS ALEXIS, PROFESSOR OF ECONOMICS, NORTHWESTERN UNIVERSITY

Mr. ALEXIS. Thank you, Mr. Chairman.

Chairman Reuss, distinguished members of the Joint Economic Committee, I deeply appreciate this opportunity to appear here today to comment on the important subject of the Interstate Commerce Commission's implementation of reforms embodied in the Motor Carrier Act of 1980.

Much of what I would have said in detail has already been commented on by the distinguished guests at this table, but there are some comments that I would like to have entered into the record.

I would be less than honest with you if I did not admit that I appear before you with a heavy heart, saddened and disappointed at the retreat from reform that has characterized recent ICC decisions.

In a series of decisions the Commission has embarked on a deliberate, calculated policy to reimpose restrictive, burdensome, inefficient, inflationary-prone, and fuel-wasting regulation on the regulated trucking industry, in contradiction to the philosophy embodied in the Motor Carrier Act and contrary to congressional intent.

The Commissions retreat has been one of the greatest disappointments of the new administration, especially when viewed in the context of President Reagan's preelection promise to reverse unnecessary and burdensome Government regulation.

Rather than progressing in the direction of greater reliance on market forces, this Commission appears determined to pervert the Motor Carrier Act and to return to the days of industry protection with the attendant ill effects of limited competition in service and rates and gross inefficiencies.

For many years, dating back to at least the P. C. White decision in 1977, the Interstate Commerce Commission has given weight to the beneficial effects of competition, to shippers and the public in general, in applications seeking grants of motor carriers' authority. A bipartisan coalition passed a Motor Carrier Act by an overwhelming majority in both Houses of Congress, endorsed the Commission decisions in such cases as the P. C. White Liberty Trucking, and the policy statement on motor carrier regulation.

The major reform areas in the Motor Carrier Act are eased entry requirements, elimination of inefficient restrictions in existing and future operating authorities, greater rate flexibility for individual carriers, reduction in antitrust immunity for collective ratemaking, and expanded private carriage options through compensated intercorporate hauling.

In each of these areas the Commission has acted to limit the thrust of this legislation.

By December 1980, the Interstate Commerce Commission had completed all of the major rulemakings required to implement the Motor Carrier Act, most of these unanimously. In testimony given last June before the ICC Motor Carrier Oversight Committees of the House and the Senate, as Acting Chairman of the ICC, I pointed out the signs of drift back to old-fashioned regulation in some Commission decisions. These actions on behalf of some Commission members were a response to what they perceived as a new environment more favorable to organized trucking interests, in particular the American Trucking Association and the Brotherhood of Teamsters.

Since then, the press has taken increased notice of the proregulation direction of the ICC and has been virtually unanimous in its criticism. Stories, articles, and editorials chronicling the decline of reform at the ICC have appeared in the Wall Street Journal, Business Week, Newsweek, Chicago Tribune, New York Times, Washingtonian magazine, National Journal, regulation and the trade press, the Journal of Commerce, and Traffic World.

The conclusion is inescapable. The current ICC is moving backward to pre-Motor Carrier Act practices. If not checked by Congress, the ICC will de facto repeal sections of the Motor Carrier Act.

The motor carrier industry is inherently competitive. If left alone without Government interference and regulation, it will produce price, service options best suited to the needs of the public. Regulation by reducing efficiency and increasing costs acts as a tax—arbitrary, capricious, and unlegislated. It is income distribution at its worst from the nonrich to some of the most profitable corporations in America.

It is time that Congress consider sunsetting all the motor carrier activities currently performed by the ICC. Anything less would be perverted by the organized trucking industry and their friends in Government to a shell game in which the public is guaranteed to lose.

Again, I want to thank you for this opportunity to appear before you today. I will be happy to try to answer any questions you might have for me.

Representative REUSS. Thank you, Mr. Alexis.

GOALS OF REGULATION IN TRUCKING INDUSTRY

I'd like to ask the panel, which has presented invaluable testimony, a number of questions which I will put to the panel as a group. Question No. 1; Shouldn't it be the aim of whatever governmental rule there is with respect to trucking in our country to produce: (1) lower rates so that the inflation-beset consumer doesn't have to pay so much for a head of lettuce or a stick of wood or whatever it is that's being transported by truck; (2) expanded competition so that the small businessmen and others aren't cartelized out of the market by Government conniving with the members of the cartel; and (3) conservation of energy by reducing crosshauling and wastage?

Is there any one of you who disagrees with that statement of what I think should be considered in the goals of governmental relations with the trucking industry?

Mr. ALEXIS. No, Mr. Chairman. Indeed, I think that was what was intended in the Motor Carrier Act and in the oversight hearings last June. In testifying I pointed out that many of the effects that were intended did in fact come to pass.

RESULTS OF MOTOR CARRIER ACT

What we did notice was in the area of rates that there was a greater emphasis on individual or independent action by trucking companies substantially over what they had been in the pre-Motor Carrier Act period.

Part of the Motor Carrier Act called for the elimination of gateways and other restrictions which inhibited the efficiency of the trucking industry. When those proceedings were completed and the application began to come in, they came in in large numbers. We have seen that the effects of this have been to come in, they came in in large numbers. We have seen that the effects of this have been to introduce efficiencies, to have trucking firms act more like competitive firms offering quantity discounts for multiple tenders, restructuring of rates. There was a beginning of a movement on behalf of the industry which did not have a built-in bias toward inflationary rate increases.

BUSINESS AS USUAL AT THE ICC

Since the middle of this year, however, I think the signal has gone out from the ICC that business as usual is back in and these procompetitive moves have been inhibited.

AUTHORITY OF ICC TO DEREGULATE

Representative REUSS. Based on my first question and what Mr. Alexis has said, I ask a second question which is this; Under present law, which is basically the 1980 Trucking Act, is there anything under the Sun to prevent a conscientious commissioner on the ICC itself from so exercising its discretionary authority as to fully support the three goals of lower prices and hence less inflation, of expanded entries so as to prevent cartelization, and saving energy? Is there anything in the law which prevents a commissioner from doing that if he wants to do it?

Mr. TRANTUM. I would respond to that, Mr. Chairman. The point is, the difficulty I think we have here is that there is nothing preventing a commissioner from pursuing those goals. Unfortunately, there's a wide spectrum of individual pursuits that are left up to the judgment of individual commissioners, all of which can be upheld in a court.

Representative REUSS. Well, if I may interrupt, sure, I don't deny the fact that a commissioner can do wrong and avoid going to jail for malfeasance; but is there anything in the law which prevents him from doing right? Namely, from deregulating trucking so that you get lower rates and less harmful anticonsumer inflation, so that you get more competition and less antibusiness cartelization, and so that you get less cross-hauling by empty trucks and hence less support for OPEC and those who would hold us to ransom? Is there anything in the law which prevents a commissioner from being a good guy?

Mr. TRANTUM. Well, here again. I have to say that there are elements in the law which require certain procedures and that the Commission undertakes certain procedures and the Commission has to go through that process. The existence of that process itself automatically, in spite of the good intentions of the individual commissioners, will cause disruption and delay and tend to block the normal transaction of business between buyer and seller—just the very fact that it's there.

I think that's what we're responding to and the fact that we seem to be unanimous in supporting sunset legislation.

I'd like to qualify one thing if I could.

Representative REUSS. I do want to ask the other witnesses, though, whether they agree that an existing commissioner is foredoomed to destroy the public interest under the law. I don't believe that. Let's hear from other commissioners.

Mr. MOORE. I'd just like to say that the experience of the Commission under the leadership of Darius Gaskins with Marcus Alexis and Tad Trantum here on the Commission shows in fact that the Commission can take a procompetitive policy which will result in lower rates, more efficient use; but as I tried to point out in my prepared statement and I think the other members of this panel agree, the difficulty with the 1980 act is that you can interpret it in a proregulation way as well as a procompetitive way.

There's nothing that prevents it from being interpreted in a procompetitive way, but——

Representative REUSS. I understand entirely, but my question is simply this; Is it not a fact that a commissioner of the ICC would be operating within his authority and thus could not be sent to jail for malfeasance for either of two courses of action; either a good guy, white hat course of action which fights inflation, fights energy waste, and fights cartelization; or a bad guy, black hat mind set which results in excessive bureaucratic intervention, cartelized oriented decisionmaking? Is it not possible within the law to go either way and, therefore, do we not in the Congress and in the country have a right to expect of our Interstate Commerce Commissioners that they wear the white hat and fight for lower prices, more competition, less energy waste? There's nothing in the law that prevents their doing that?

ANSWER IS SUNSET LEGISLATION

Mr. MOORE. There's nothing in the law. In fact, we have seen commissioners of both stripes and neither stripe is in jail for malfeasance. The difficulty is that we could all hope we were going to get more Marcus Alexis' and Tad Trantums appointed to the Commission, but we're not always going to be confident that we will, and unless the trucking regulation is sunsetted, even if we get a change in the existing chairman's mind and turn the Commission around now, 2 or 3 years from now we'll be having this same hearing again discussing what went wrong with whoever is then chairman and has gone back to the old ways.

Representative REUSS. Mr. Kahn.

MOTOR CARRIER ACT ENCOURAGES DEREGULATION

Mr. KAHN. Clearly, the first answer to your question is obviously there's nothing in the law that prohibits the ICC moving in the direction of greater competition, with all the benefits that you described. On the contrary, point No. 2, to the extent that the law was changed, it clearly was changed in that direction. No. 3, you will, however, have pointed out to you that the law is not a deregulation law and that therefore, to the extent that you define being a good guy as I think most of us at the table would define it as economists, as being for real deregula-

tion, you couldn't do that, but that leaves a wide range for going in precisely the direction you're talking about.

Finally, you will have undoubtedly called to your attention the recent decision of the fifth circuit court on the ICC's proposed relaxation of entry rules, in which the court said, that the Commission had gone too far in the direction of total deregulation. So that really confirms that total deregulation is not possible.

But, surely, the principal answer to your question is, the law not only permits but encourages moving forthrightly in the direction of more effective competition and away from cartelization.

ADMINISTRATION PHILOSOPHY

Representative REUSS. Mr. Kahn, I have read into the record President Reagan's philosophy on trucking regulation in which he says—and this is reported in the Farm Bureau News—that "we must restore the health of the Nation's transportation system. The Reagan-Bush administration will define the role of Government in transportation and will permit the free market to promote competition, improve efficiency, reduce costs and improve the return on investment. The role of Government must change from one of overbearing regulation to one of providing incentives for innovative technological development. Our objective will be to deregulate and revitalize the entire transportation industry, rail, highway and water, to reduce waste and to bring commodities to markets swiftly, safely and economically."

DOES THE LAW PERMIT CARRYING OUT PRESIDENT'S PROGRAM?

Now is there anything in the existing law, Mr. Kahn, which prevents an administrator who wants to follow the advice of the appointing authority, President Reagan, from following that line?

Mr. KAHN. No.

Representative REUSS. Mr. Alexis.

FIFTH CIRCUIT COURT DECISION

Mr. ALEXIS. I would echo Mr. Kahn's "no" to that question. I think that it's worth pointing out, now that Mr. Kahn has brought up the issue of the fifth circuit reversal of the ICC's rulemaking, that even within the Commission itself there is now some great debate on what to do about it. An option available to them, of course, is to appeal the fifth circuit's ruling. That's not the last step. But the Chairman has lobbied very hard and has so far been successful in getting another commissioner to go along with him to prevent the Commission from going to the Supreme Court to seek a reversal of the fifth circuit order.

CHAIRMAN TAYLOR AN INVETERATE REGULATOR

I must say also that the ICC is a collegial body and members try to be accommodating so that they can come out with as large a majority as they can to show a singleness of purpose, and that a new Chairman, as a new President, enjoys a certain amount of honeymoon with his members. You will see that, I think, in the tone of the Commission in July and August and perhaps even into early September.

What we are now seeing, however, is that the Chairman in a Commission that is not notorious for its market oriented procompetitive bent, is losing some votes. When he votes with one particular commissioner on a division of the Commission he is likely to prevail, but in another division, he is losing on a large number of issues.

So what I'm really saying is that what we find in Chairman Reese Taylor, who is a very likeable, personable chap, is someone who is just an inveterate regulator, and more of a regulator than anyone I have served with on the Commission.

It was made clear in his confirmation hearings, if one would go over that record, that both Senator Packwood and the ranking Democratic member, Senator Cannon, indicated very clearly that they saw the Motor Carrier Act as a move to remove restrictions and to bring more competition to the motor carrier industry. It was their assumption that this was a view shared by Mr. Taylor.

I would say that the recent history will show that they made a misjudgment. It's very important, as Tom Moore has pointed out, what kinds of appointments are made to the Commission and how they respond to lobbying from industry sources. Unfortunately, I think some appointees who are more likely to be receptive to the point of view of the lobbyists than to the public interest.

SUNSETTING SHOULD BE CONSIDERED

Given that set of facts, it is inevitable that there will be cycling over and over between Commissions which veer off toward competition and those that will pull it back into the orbit of regulation. Since there is no real good economic reason to regulate this industry—trucking—the sensible thing for Congress to do is to set in motion the legislation to sunset the motor carrier aspects of the ICC.

Representative REUSS. Let me get to my third point.

SHOULD PRESIDENT REAGAN EXERCISE MORAL SUASION?

A majority of the panel, I think, has suggested that to which I'm very sympathetic; namely, either a total sunsetting or repeal of the Interstate Commerce Commission. I think, Mr. Moore, that's substantially what you suggested. And that idea, when I look at the devastation over the years to our American rail system and to the American consumer caused by the Interstate Commerce Commission, may well be the dustbin fate which it deserves. But passing that point, let me get the view of the panel on this. Here we are confronted with a stubborn legislative situation in the Congress. As you can see, we are having trouble agreeing on a budget and a continuing resolution. We have a Republican-controlled Senate and a Democratic-controlled House and the Democrats have their bollweevils and the Republicans have their gypsy moths, and it's not a healthy situation.

While it would be nice to have legislation either doing away with the ICC or clarifying that which may be inadequate or ambiguous in the present law, is it not a fact that if President Reagan tomorrow called to the White House, Chairman Taylor and—using the technique which he has recently used so ably in his woodshed episode with Mr. Stockman—read to Mr. Taylor what President Reagan told the American Farm Bureau Federation in the election last year about the need

for competition, about the need to get prices down, about the need to stop wasting diesel fuel, about the need to let small business truckers in for a piece of the action if they want it, and above all, about the need for getting the bureaucratic presence of the ICC off the back of the trucking industry, don't you think that that could be a salutary experience and be good for the general public interest?

Mr. KAHN. I'd like to speak to that because I can speak from direct experience.

PRESIDENT IS THE KEY

In your question, you have put your finger on the proper locus of responsibility. I don't disagree with Mr. Alexis or Mr. Moore that there will always be a danger under the present act, as long as there's an ICC there will always be a danger that there will be appointed people that will choose to interpret the act in a cartelistic, protectionistic manner. But a President is a President. And if a President decides sincerely that he believes in free enterprise and believes that this industry can be effectively competitive, there's no reason in the world why the ICC cannot be responsive. Ultimately, that's where the responsibility lies.

Now if I may permitted to quote myself—and this is not a partisan statement I assure you—this administration speaks with the language of the free trading, free enterprise Dr. Jekyll, but all too often its actions are the actions of the protectionist Mr. Hyde. The President can turn this around if he wishes to.

Representative REUSS. Mr. Alexis, what would you say to the proposition that within the parameters of existing legislation a strong Presidential reassertation of the desirability of competition and lower prices might do some good?

PRESIDENTIAL "MESSAGE HAS GOT LOST"

Mr. ALEXIS. Well, I would certainly agree that the President is the locus of that power and if I follow what the trade press tells us and what my good Republican friends in the White House also tell me, in fact, the President did have Mr. Taylor in and supposedly he told him that he likes more competition. He may not have told it to him strongly enough or it may be he didn't sound sincere enough. I don't know. But what I do see is that the actions of the ICC have not been remarkably different or markedly different than what they were previously.

But, indeed, if the President made known his feelings in the most clear and strong way so that it would be felt at the ICC—and the President has a tremendous opportunity at this point to influence the source and behavior patterns of people at the ICC because he has a whole string of appointments which are going to fall due quickly. There's one that will become due at the end of December and another in December of 1982 and I think that Mr. Taylor himself in December of 1983. Commissioners who like their jobs hear footsteps too, and the footsteps they love to hear are the footsteps of the messenger bringing the news of their renomination. And if the President would make it quite clear what it is he's looking for in an appointee, though he can never be guaranteed that they will after they have been ap-

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pointed—that they will behave themselves as they have promised, he certainly can make it quite clear what the White House is seeking.

So I would have to conclude that someplace between 1600 Pennsylvania Avenue and 12th and Constitution the message has got lost.

WOULD PRESIDENTIAL DECLARATION HELP?

Representative REUSS. I turn now to Mr. Moore and ask him the question which I'll rephrase: Granted that the millennium—the one you suggested—is the best solution, would it not be useful if, by some kind of a Presidential declaration to those who ought to hear it, it were made clear that the ICC should do everything possible to lower prices and save energy and eliminate cartelization? Would that not be of some help?

Mr. MOORE. I think it would be of some help but I, like Marcus, have heard stories that, in fact, Chairman Taylor has been called up to the White House and talked to about the virtues of competition and that this has not had a great deal of effect.

You made the point that the Congress is busy with the budget and the problems they can't agree on. I might point out that the President also has his appointment problems these days in other areas and he is also busy. So he has, I understand, tried once. I think it would be helpful if he tried again, but I think that inevitably Mr. Taylor has shown himself, as Marcus says, as an inveterate regulator, and I'm not sure that you can change the tiger's stripes.

PRESIDENT'S TALK WITH CHAIRMAN TAYLOR

Representative REUSS. Well, you're telling me a little bit of history that I guess I didn't know. When was this Reagan-Taylor chat?

Mr. ALEXIS. It was this fall, either September or October. I can't recall exactly. It was chronicled in Business Week, among other places, so it's not as if it's telling tales out of school.

Representative REUSS. Well, Mr. Moore and Mr. Alexis, what did the press say transpired at that meeting?

Mr. ALEXIS. Among other things, I'm told, that the message was that the ICC was moving in a direction which was contrary to the philosophy and the policies of this administration, that it was not sufficiently attentive to the market and to competition, that it was being protective of the industry and excessively restrictive, and that they wanted to see some change in direction at the Commission. That was essentially the gist of it.

SENATORS HAVE ALSO TALKED WITH CHAIRMAN TAYLOR

I might also point out that Senators Cannon and Packwood also had Mr. Taylor in—Senator Packwood is chairman of the Oversight Committee in the Senate—to have a chit-chat on the same matter. The news of what has been transpiring at the ICC is now quite public and the reception in many informed circles has not been good.

The real question is, will anything happen to change that? There are some new appointments that have been made, but they have not been confirmed by the Senate, which might bring some new blood to the ICC

and change some of the voting. One can hope for that, but I think we need to be very relentless in the pursuit of these goals. Otherwise, they will slip away. That is one reason I'm particularly happy that this committee has chosen to have these hearings on trucking deregulation.

POSSIBLE CHANGE IN ICC ATTITUDES?

Mr. MOORE. I'd like to add that the effect of these lectures has been somewhat effective. I have noticed that Mr. Taylor's rhetoric has changed anyway toward a more procompetitive direction; however, his voting has not.

Mr. TRANTUM. I would just like to make two points. One is a qualifying point. I'd like to underline what Marcus indicated. The two or three names that we have been hearing as being supported by the White House for appointment to the ICC, those individuals seem to be very procompetitive and very sympathetic to what we have been discussing. So I'm encouraged by that.

EFFECTS OF REGULATION ON FREIGHT RATES

I'd like to certainly qualify my own position, getting back to your very first question. In my judgment, the aim of deregulation is not to lower freight rates. The aim of deregulation is to let the market forces dominate and get the ICC out of the marketplace.

Clearly, we can postulate that the regulation itself has tended to inflate freight rates, but in many instances it may have depressed freight rates, and we don't really know what is going to happen to the average level of freight rates.

I would also indicate to you that within the State of Florida since it has been totally sunsetted, average freight rates have remained about the same.

Mr. ALEXIS. May I make an amendment to my friend, Mr. Trantum's statement? While average freight rates have remained about the same, the rate of increase in freight rates in Florida is less than they have been nationwide in regulated trucking.

Mr. TRANTUM. Absolutely.

Representative REUSS. Would you agree, Mr. Trantum?

Mr. TRANTUM. Yes. The average nominal freight rate, as I understand it, in Florida has remained the same about the last 12 months.

Mr. KAHN. But you know what other prices have been doing.

Representative REUSS. With 10 percent inflation in our economy, I'll settle for a zero increase any time.

Mr. ALEXIS. What this says is while deregulation may not lower rates immediately, the inflation bias that's inherent in these rates will, over time, be eroded and possibly be eradicated by market forces. So while Mr. Trantum is obviously right because we do have some cross subsidies in the rates, we do have some rates which have not been rationalized in terms of market forces. There will, indeed, be some adjustments up and down in these rates. But I think you're quite right that in the long-term the effect will be that rates will be lower as a result of deregulation or sun-setting than they would be if we kept on the regulatory regime that we presently have as it is implemented by the current ICC.

WHICH IS THE PRESIDENT'S TRUE PHILOSOPHY ON TRUCKING?

Representative REUSS. We shall know more about this meeting at the White House when Mr. Taylor gets here, which he will shortly. I, of course, will be interested in knowing whether the message communicated to Mr. Taylor at that meeting was along the procompetitive lines of the President's submission to the American Farm Bureau Federation or whether it was perhaps along the lines of what he told the American Trucking Association and the Teamsters which was, "Although I have long been opposed to increased and unnecessary Government regulations, the current policy of the Carter administration on deregulating the trucking industry is ill-conceived and not in the best interest of the transportation requirements of the country. Any industry as vital to the national economy and the national defense as trucking is, cannot be deregulated in one stroke without tremendous dislocation of individuals and organizations. Trucking deregulation should be phased in over a long period with consultation with the affected parties as each step is taken. I would proceed no further without such consultation."

So along the general doctrine of which every manifestation comes the moment to decide, I would think that from on high there has to be an internal decision, and it may be that that has been made in the right direction. That is our hope and we will very shortly find out.

RESTRICTIVE VIEW NEED NOT GOVERN

I would make one more point before I recognize Mr. Wylie, and that is that on every regulatory measure ever passed by the Congress, there are here and there Congressmen and Senators who have a restrictive view of the legislation. My question is, is it not a fact that it's perfectly possible to spell out of the language of the Motor Carrier Act of 1980 a set of restrictionist stances, but that the mere fact that that is technically possible doesn't mean that the Commission ought therefore to adopt those stances? What would you say to that, Mr. Kahn?

INTENTION OF MOTOR CARRIER ACT

Mr. KAHN. Well, it's a rhetorical question. I think you're obviously correct and, again, the question is, what did Congress intend? What is a fair interpretation of its intention behind that act? And I think the only fair interpretation is that it intended the ICC to move in the direction of deregulation, in the direction of freer competition.

Representative REUSS. Congressman Wylie.

Representative WYLIE. Thank you, Mr. Chairman.

I might say that I'm glad to hear about the experience in Florida, but I want to know about Ohio. I'm a little bit more provincial maybe.

But I'd like to take this opportunity to welcome this very distinguished panel before us today. I might say, as an advocate of the free market economy, I have a keen interest in the Government regulation and intervention and I would observe that the Motor Carrier Act of 1935 came into being as one manifestation of the intervention philosophy of the New Deal and the trucking industry was then first subjected to ICC regulation, and that was a liberal Democratic philosophy at the time. And I may be wrong in my characterization of my good friend, the distinguished chairman of the Joint Economic Committee, but it sounds to me like this morning that he is agreeing more and more with

President Reagan's deregulation philosophy vis-a-vis the trucking industry.

Representative REUSS. Absolutely, Congressman Wylie. I agree with what Mr. Reagan said in his letter to the American Farm Bureau Federation.

Representative WYLIE. Right on. All right.

Well, I find your testimony this morning extremely thought provoking because last year the Motor Carrier Act of 1980 changed the law somewhat to allow market forces some leeway and I thought that was all right and might increase competition, so I supported it; but I'll have to say that the American Trucking Association and the Ohio Trucking Association, with which I'm more familiar, doesn't seem to be all that crazy about the law. And one argument that they used was that service to small communities will suffer and that large communities will get the benefit of it.

I might say that I voted for airline deregulation and I'm not real sure that I was right about that because the fare from Columbus to Washington, and I take that trip at least once a week and sometimes twice a week, has doubled since deregulation. But just over the weekend I made a deal with People's Airline to go to Florida over the holidays—you mentioned Florida and that is what brought it to mind—for $69 whereas Florida is being benefited again, and those who travel back and forth from Columbus to Washington haven't been.

DO SMALL COMMUNITIES SUFFER UNDER DEREGULATION?

What about that argument of the trucking association that the small communities are going to suffer and what they will really do is go where the market is?

Mr. ALEXIS. Well, I happen to know a little bit about the small communities problem because this is one of the things that we were mandated to monitor in the 1980 act. In the oversight hearings last June before the House and Senate both the ICC studies and the studies of the Department of Transportation uniformly concluded that there were no more and probably fewer complaints from smaller communities in the first 8 months or so of the Motor Carrier Act implementation than there had been in a comparable period earlier; there were more communities reporting more service than loss of service. Indeed, it is also true that before the Motor Carrier Act, many trucking companies selectively chose the communities they would serve and what one found was that the common carrier obligation was being wholesalely ignored anyway and there was no enforcement of that common carrier obligation.

The Department of Transportation of Iowa, which is in a very rural State, and which supported the Motor Carrier Act, also found that in fact small communities were largely being served by small package express operations like UPS and the Trailways and Greyhound operations, and that indeed the regulated regular route trucking firms were not providing the primary service to these small communities.

So, Mr. Wylie, I think that it is quite clear that the Motor Carrier Act has, at worst, had no change on the status of service to small communities and very likely has improved what service there was there.

Representative WYLIE. Mr. Moore, do you think complete deregulation will increase competition for small communities?

EXPERIENCE IN CALIFORNIA AND BRITAIN

Mr. MOORE. I think it will only improve service. There have been a number of Department of Transportation studies, and in my own State of California, the PUC there did a study on trucking to small communities and found that ICC regulation played no role or no significant role in providing service to those communities. It was done either by private trucking or non-ICC regulated trucking.

The same argument, I might mention, was introduced in Great Britain when they were considering deregulating their trucking industry and the trucking industry at that time argued that service to small communities would suffer. Well, I spent some time in Great Britain—in fact, I was there 2 months ago on a follow-up study—and there's been no loss of service. In fact, there's been a gain in service to small communities and improvement in service, and I would argue that competition is the best insurance for good service to these communities. Regulation can never substitute and has never really attempted to force truckers to serve these small communities.

REGULATION DOES NOT GUARANTEE SERVICE

Mr. KAHN. May I underline that last one, sir, because we did some studies, along with the Commission studies and the studies by the Department of Transportation, when we were considering changing the Motor Carrier Act of 1980, and what we found was precisely what Professor Moore said in his last sentence. The ICC did not know who was serving any small communities we could name. It did not keep track of it. They did not know. They were unable to tell us a single instance in their entire history in which they had denied any trucker the right to leave small communities.

The Department of Transportation studies to which Mr. Alexis refers, demonstrated that most small communities were being served preponderantly by the small package carriers and by exempt carriers and by private carriers, and also to some extent by specialist small certificated carriers.

There was no reason why any large carrier should have continued unprofitable service to small communities because the ICC would not require them to maintain it. There was no way therefore in which they could cross-subsidize that service.

EXAMPLE OF AIRLINE SERVICE TO SMALL COMMUNITIES

In the aviation field, there have now been four studies that I'm aware of, of what has happened to the convenience of service to small communities, and they have found uniformly—though diminishingly as fuel prices have gone up—that even as late as May 1981 many more communities have had improved convenience of service in terms of convenience of scheduling than have suffered declines in service.

Representative WYLIE. Well, Columbus, Ohio is not a small community. I may say it's the only city in that part of the United States with over a 100,000 increase in population in the last decade, and I know that to be the fact. We have about 600,000 now. But I can tell you that our service between here and Columbus has not improved. As a matter of fact, it's gone the other way. And I think part of the reason is that airlines are using planes to go to areas where there are

more customers or where they think the fast buck is. Is that right or not?

Mr. KAHN. I would be very much interested in knowing what has happened in Columbus. One of the ways in which one might feel service has deteriorated—and I can speak of it personally—is that jet service has often disappeared and been replaced with commuters. So you have to be indifferent to the fact that you have to crawl into the plane on your hands and knees. I confess that is something of a disadvantage. But there's no reason for you to abandon your faith, Mr. Congressman, in free enterprise. If there's a market there of 500,000 to 600,000 people, it must mean you're having thousands of enplanements per day there's a market there to be served and it will be served.

Now it isn't as though we have a fixed number of planes in this country and therefore carriers will say, well, we'd rather fly to Florida so we'll take them away from Columbus. We have a philosophy of a growing economy, of a growing market. Some will pull out. The jets should pull out, especially with fuel prices having doubled since we deregulated the airlines. It is wasteful of energy and uneconomic for you to have these great big jets make thees small hops, but you will have free entry if there's a market.

Representative WYLIE. They do all have full loads anymore, I might say. I make my reservation a little ahead of time now.

SUNSETTING

What's the rationale, Mr. Kahn, for sunsetting or abolishing the CAB but not doing the same for the ICC?

Mr. KAHN. None whatsoever, at least so far as trucking is concerned.

ICC BUDGET SHOULD BE REDUCED

Representative WYLIE. None whatsoever. OK. Should Congress make deeper cuts in the ICC budget as a way of getting their attention?

Mr. ALEXIS. May I take a crack at that and then give it to Mr. Trantum? We went around this at the 1981 ICC budget hearings. The ICC budget, in terms of personnel and dollars, has been on the decline for years, even in the Democratic administration of President Carter. Before the Reagan election we projected a decrease of about 200 out of 1,800 staff people and a budget decrease of several million dollars. I defended that budget for a number of reasons. Mr. Trantum supported a budget which was even lower. The Appropriations Subcommittee in the House originally was going to reduce our budget by about $15 million and reduce staff about another 300 below even what OMB had requested.

After Mr. Taylor became chairman, he was successful in reinstating those cuts and I would now say, given what has happened in the way in which those positions have been allocated, particularly to enforcement activity which will have an additionally chilling effect on the competitiveness in this industry, I strongly would endorse a substantial reduction in the ICC budget and certainly would support a budget reduction which would take out all of the motor carrier related activities. And by doing so, you could save at least $30 million in the current ICC budget. And I would say, given the kind of budget stringency and the kinds of burdens we're asking our most disadvantaged

people to suffer through, that it makes no sense, no justice, no rhyme, nor reason, to have a bloated ICC budget carrying on uneconomic activities.

Representative WYLIE. I have a couple more questions but the chairman has one first.

Representative REUSS. If you would be kind enough in forebearing, I would ask the panel to step aside for a moment and if you can stay, please do, because I want to make sure Representative Wylie has an opportunity to examine you.

Chairman Taylor has arrived and would you step up, Chairman Taylor?

Representative WYLIE. If they can't stay, I can submit my questions for the record if any of them have to leave.

Representative REUSS. Fine. I appreciate that.

Chairman Taylor, we appreciate your being with us. We know the demands made on your time and for the record, as I understand it, you have been excused by the House Committee on Interior and Insular Affairs, who also had you before them, so that you could appear here, and we know that you're due back there so we will expedite your stay.

Mr. TAYLOR. I hope we have been excused. Mr. Chairman, we really just walked out because an aide came over and said you wanted us over here.

Representative REUSS. Well, that's correct, and we will endeavor to enable you to get back there very shortly. You have a prepared statement which, under the rules and without objection, will be received in full in the record. And would you now proceed? Let me just say that the testimony of the witnesses so far—two economists, one of the Republican persuasion and one of the Democratic persuasion, and one former Commissioner who's a Democrat and one former Commissioner who's a Republican—suggests that, within the parameters of existing law, the members of the current Commission, and specifically yourself, have been less than zealous to work toward the goals of greater competition, lower prices to consumers, and freer entry for uncartelized small business, and the saving of energy.

In your statement, I know you will address yourself to that and we are very glad to have you here. Proceed.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JANICE ROSENAK, LEGISLATIVE COUNSEL; AND ROBERT SHEPHERD, CHIEF OF STAFF

Mr. TAYLOR. Thank you very much, Mr. Chairman. I would point out at this time that I have with me on my right Jan Rosenak, the Commission's legislative counsel who recently came to the Commission from Senator Cannon's staff. Mrs. Rosenak was very active in the drafting of the Motor Carrier Act of 1980 and also the Staggers Act and has been a great help to me insofar as our implementation of the Motor Carrier Act of 1980 is concerned. On my left I have Mr. Shepherd, who is my chief of staff. He was here during the proceeding this morning and heard anything that came up to which we should respond. Perhaps he can give me some assistance in that regard.

Thank you for the opportunity to appear here today to present my views with regard to the implementation and effects of the Motor Carrier Act of 1980. In addition to my prepared statement, I have attached the following: (1) a list of proceedings incidental to the Motor Carrier Act; (2) a list of significant proceedings which are under judicial review; (3) a package of studies and reports that form the basis for the Commission's monitoring of the effects of the act; [1] (4) various statistics concerning action on applications for authority; (5) my proposal to eliminate the public interest standard in applications for motor common carrier authority; and (6) an excerpt from the entry section of the House Public Works Committee "Discussion Draft" on regulatory reform of the motor bus industry. These are attached as appendixes I, II, III,[1] IV, V, and VI, respectively.

The Motor Carrier Act of 1980 significantly reformed Federal regulation of motor carriers of property. Congressional policies mandated eased entry, rate flexibility, and a reduction in the scope of antitrust immunity. In implementing the act, I believe the Commission has endeavored to promote competition and efficient transportation services in accordance with the objectives of the transportation policy for motor carriers of property, as set forth in 49 U.S.C. 10101(a)(7).

Although the Motor Carrier Act of 1980 significantly reformed Federal regulation of the trucking industry, it did not, as some have been erroneously led to believe, totally deregulate the industry. The act calls for a "safe, sound, competitive, and fuel-efficient motor carrier system" and gives the ICC "explicit direction for regulation of the motor carrier industry, and well-defined parameters within which it may act." Congress warned that the ICC "should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation. * * *"

The act requires that efficient and well-managed motor carriers be permitted to earn adequate profits; thus the financial well-being of the industry remains a matter of concern. Other considerations must be taken into account, including: (1) the productive use of equipment and energy resources; (2) service to small communities; and (3) perhaps most importantly, the needs of shippers, receivers, and consumers. All of these factors must be considered and balanced as the Commission endeavors to promote competition.

Clearly, the intent of Congress is that the Commission is to reasonably interpret, administer, and enforce the law. In my opinion, the Commission has moved forward in a timely fashion to promote competitive transportation service. In so doing, however, certain interpretations of the relaxed entry standards have been determined by the fifth circuit court to be inconsistent with the Commission's legislative mandate. There's a footnote 2 at the bottom of this page and the next which further comments on that decision.[2] At the moment, we are considering whether to appeal the decision or take the case back on remand.

With respect to enforcement, unlike the harm standard which Acting Chairman Alexis circulated, but which never came into being and wasted endless time and hours of effort at the Commission, our program will be predicated first upon identifying the problem areas. A team has been put together to design an effective program based upon: (1) identifying the areas requiring enforcement to protect the

[1] The information referred to may be found in the committee files.
[2] The information referred to may be found in the committee files.

public interest; (2) establishing the priority of various enforcement activities; (3) applying available resources to priority areas to determine the scope of what we can do; (4) preparing a simple, easily understood guide for use by all of our field offices; (5) engendering cooperation with State enforcement and regulatory officials to achieve maximum effectiveness with our minimal resources; and (6) reviewing joint Department of Justice and ICC policies regarding enforcement litigation. And, as I've said in many speeches, our enforcement effort is not intended to be a gumshoe operation; it's not intended to have a chilling effect; and it will not have a chilling effect. I submit to you, gentlemen, that if you have regulation without any enforcement, then you have regulation for regulation's sake and there can't be anything more of an abhorrent sham to me than that. So if we are not going to enforce regulations, then it seems to me we shouldn't regulate at all.

Obviously, an effective enforcement program takes money, and what we are able to implement will depend upon available resources after a review of how best we can utilize the Commission's appropriation of $74.15 million for fiscal year 1982. That figure represents a compromise between the 20-percent cut, or a budget of $68.5 million, and the Carter budget figure of $79 million. When I started at the commission, I endeavored to get something above the $68.5 million that a House subcommittee had recommended as a result of Commissioner Trantum's hip shot that all we needed was 1,000 people and $50 million. That would have been tantamount to sunset, and so we did get some money restored, although the final figure is not certain at this time. We are going to work as well as we can with the figure that we have. It's not going to be any luxury. We're going to be on a very, very tight tether and we all realize that. But, we wili do the best we can with the resources we have been allotted.

In any event, we will certainly do our best to cope with the current high level of unlawful transportation activities. Let me say, however, that the major goal of our enforcement program will be to protect the public from harm. We are not interested in imposing petty fines or engaging in midnight raids. Our role requires a fine touch and not heavy-handed regulation.

At my direction, our office and bureau heads were recently asked to review all regulations and recommend those which should be eliminated or revised because they no longer serve the public interest by virtue of being unnecessary, unduly burdensome, or outdated.

While our pending analysis of all ICC regulations was undertaken in the spirit of regulatory reform, the results of our endeavors will obviously impact our enforcement program. With this said, I will now turn to a discussion of the effects of the act itself, which, by the way, are somewhat difficult to measure because of the economic conditions that we are confronted with today and because, quite clearly, the act as originally passed was not, as the fifth circuit court has clearly enunciated, entirely enforced or implemented by the prior regime consistent with the standards that were established by Congress.

In any event, it appears that the motor carrier industry and the users of its services have responded favorably to the new legislation and I believe the following highlights will amplify that point:

1. Since passage of the act, nearly 5,600 new carriers have applied to the Commission for operating authority. In addition, over 40,000

new certificates have been served during this time. Of these, approximately 17,500 were authorities granted on applications filed under the new statute.

2. Overall, shippers appear to be satisfied with the level of service they are receiving. Since the act became law on July 1, 1980, monthly complaint levels have generally been lower than they were in the same month of the previous year, although this may be due in part to decreased tonnage caused by depressed economic conditions.

3. Complaint levels from small communities have decreased even more sharply than those from larger communities.

4. Where small community service has changed, it appears in some instances to have improved. Of the shippers surveyed in the first phase of the Commission's statutorily mandated three-phase nationwide small community survey, providing information for the 6-month period from July 1980 through December 1980, 13.1 percent said more service was available now than before the act, 85.2 percent said the availability of for-hire truck service was unchanged, while 1.7 percent said service was less available now. Questions about service quality received similar responses: 16.1 percent of those sending freight said their freight arrived loss-free more often, 3.0 percent said less often, and 80.9 percent said freight arrived in good condition with the same frequency as before.

5. There has been greater pricing innovation and more independent ratemaking since passage of the act. The number of independent rate filings has approximately doubled from 1979 to 1980 and continues to be up in 1981. The vast majority of these are rate reductions, and many independent filings apply to less-than-truckload as well as truckload traffic. Again, some of the reductions may be due to the economy, but we believe the act has had a substantial pro-competitive impact. However, we are now beginning to see a number of filings that will have to be carefully examined to make sure they are not predatory or discriminatory. The act still requires us to make sure that we do not allow predatory or discriminatory rates. We are having a look at those now. Unlike what happened apparently last March or April, when somebody went down from the Bureau of Traffic to Acting Chairman Alexis and said, "What about the legality of some of these filings?" I have not responded as he did. He said, "Don't worry about whether they're legal; just file them." I have had a look, and will continue to look because I think that's what the law requires.

6. The economic downturn caused industry tonnage in 1980 to drop to its lowest level since 1967. This reduction in traffic has had adverse effects on employment levels and carrier profits. On the other hand, the industry's overall financial results show it to be stronger than in previous periods of recession, although many individual trucking companies are having serious problems. One major carrier has indicated to me within the last 2 to 3 days that its traffic is only 75 percent of what it was in 1979.

7. Despite the low general business level that prevailed for much of 1979 and 1980, financial data indicate that, overall, the industry is generally sound. The number of motor carriers that have ceased operations was larger in 1980 than in 1979, but this percentage increase is comparable to the experienced by firms in the rest of the economy. The number of firms exiting the industry was higher in 1980 than 1979. While there have been individual business failures, there

is no evidence of widespread business failure, and no indication of a significant increase in concentration.

8. Small general freight carriers experienced slightly greater declines in profitability than larger carriers during the economic downturn and more relaxed regulatory climate in 1980. Class II general freight carriers—those with annual operating revenues of between $1 million and $5 million—experienced an 8 percent drop in operating income, compared to a 1-percent drop for class I general freight carriers, which are those with annual operating revenues in excess of $5 million.

9. In response to the revised Transportation Policy in the Motor Carrier Act of 1980, an effort has been initiated to promote greater minority participation in the motor carrier industry. A monitoring program has been instituted and a listing of minorities already established in the industry has been developed. A series of nationwide hearings have been held to determine whether minority carriers encounter any special problems in entering the industry.

At this point, Mr. Chairman, I would like to offer for the record a letter which I received just the other day, dated November 10, 1981, addressed to myself. It's from Greenleaf Transportation. I will just read the first two paragraphs and then I think——

Representative REUSS. The entire letter will be received.

Mr. TAYLOR. All right. We'll submit it. It's from a minority trucking company which is quite complimentary about actions the Commission has taken in order to facilitate their obtaining operating authority.

[The letter referred to follows:]

GREENLEAF TRANSPORTATION,
Brea, Calif., November 10, 1981.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C.
(Attention of Reese Taylor, Chairman).

DEAR SIR: Rarely are there opportunities for Small Businessmen to praise Government Employees for their efforts and assistance.

I would like to take this opportunity to acknowledge the cooperation of Mr. Walter Strakosch of the Los Angeles office for his conscientious and valuable assistance to my company, Greenleaf Transportation, in applying for and obtaining the ICC Authority we now hold.

As you know, the 1980 Motor Carrier has brought many opportunities and a little confusion to the transportation industry. Opportunities for increased participation by minority companies such as Greenleaf could never have been obtained without the help and informative attitude of ICC personnel such as Mr. Strakosch.

One of the burdens that has deterred more participation by minorities and small business in the industry was the extreme expense and legal fees associated with the obtaining of operating authorities.

Greenleaf Transportation now holds three grants of Authority under MC–148401:

Sub 2, Nationwide Contract Carrier Authority.

Sub 3, Common Carrier Authority on foodstuff and related articles between California and Arizona.

Sub 4, General Commodity Common Carrier Authority except Class A & B explosives between points in California, Arizona, Nevada, Utah, Texas, New Mexico, and Colorado.

The entire application process was handled by me without legal assistance, thanks in part to the 1980 Motor Act, your Ombudsman's Office, and most of all your Los Angeles Office District Supervisor Mr. Walt Strakosch.

Thank you for your efforts and assistance in interpreting the rules, regulations, and intent of the 1980 Motor Carrier Act, Mr. Strakosch.

Sincerely,

HENRY F. JOHNSON,
President.

Mr. TAYLOR. Before concluding my remarks, I would like to express my personal views with respect to the continued need for an applicant to present evidence of public need in an operating rights case. I want to emphasize that these are my personal views, as the Commission has not yet taken a formal position on the matter.

After passage of the Motor Carrier Act, broad grants of authority, with respect to both territories to be served and commodities to be carried, were issued. In many cases, these grants exceeded what an applicant requested or what his supporting evidence substantiated, despite the admonition of the act that we carefully look at the supporting evidence and that we strictly confine ourselves to a case-by-case analysis in issuing a certificate which corresponds to the supporting evidence. In light of the traditional view of the common carrier obligation, which I'm sure all of you understand, I believe this has created what we have referred to quite commonly as a "Catch-22" situation. On the one hand, the traditional approach requires carriers to provide transportation services in accordance with their certificates, the operating authority description being contained therein. On the other, a carrier cannot realistically be compelled to serve if it was granted for more authority than requested, warranted, or needed. In a recent court decision, the fifth circuit court of appeals has held that insofar as commodities are concerned, the Commission exceeded its authority under the Motor Carrier Act by requiring overly broad grants of authority and essentially disregarding the fitness, willingness and able test.

In light of the many broad grants of operating authority that have been issued to carriers in the last several years, the Commission is currently reexamining the scope of the common carrier obligation. Alternative methods of determining the scope of the obligation have been proposed, such as allowing a carrier to determine the extent of its own holding out, either by reference to filed tariffs or more informally through advertising brochures and other materials furnished to shippers. We have held oral argument on the matter, and I believe a decision should be forthcoming soon.

If little remains of the common carrier obligation, then I do not believe there is any real point in maintaining the entry standard of the 1980 Act which requires the submission of "evidence that the service proposed will serve a useful public purpose responsive to a public demand or need." It's that little sentence that has created all this controversy about who's going to get in in accordance with that standard and who isn't. I'm trying to tell you that I believe, gentlemen, that that whole standard should go. You want to talk about saving money. We've got all kinds of GS–13's, 14's, 15's, all lawyers, sitting down there in the section of operating rights playing with maps all day trying to carve out a certificate that meets the evidence that has been submitted. I've said it's a silly little game, and that's exactly what it is. We have some language drafted which we hope to propose soon and bring the game to an end.

I believe this is particularly true—the exercise in futility—and in light of the fact that as a result of the past grants of broad authority, the horse is already out the barn door.

What we should have is a precise "fit, willing, and able" test which is carefully crafted so it doesn't fluctuate in severity or laxity with a change in administrations. It shouldn't matter in terms of a carrier's getting authority whether Reese Taylor or Marcus Alexis is Chairman

of that Commission, and that's why we have suggested there be some additional explanatory language to determine for all time what fitness, willingness and ability is really intended by Congress to mean. All carriers, regardless of size, should have the same opportunity to compete. Many of the large ones have gotten all they want out of the ICC, and now we're looking at the little ones. I believe this is too important to be left to the whim and caprice of individuals.

Attached to my prepared statement is a preliminary draft of legislative language which would make changes of the nature I have just discussed, and I emphasize it's a preliminary draft because there are undoubtedly things in there that should be changed and will be changed, but it does, in essence, reduce the test for entry in the motor carrier field to "fit, willing and able," and that's the thrust of what I'm trying to say here in this presentation. I want to emphasize—and I can't do this strongly enough—that the "fit, willing and able" test should be one which does not—and I emphasize not—reinstitute entry barriers. The purpose of my proposed revision is to further relax entry standards in keeping with congressionally prescribed standards, and not to create any new barriers. It wasn't very long after I made this recommendation before somebody suggested that by my proposal I just want to substitute a new sieve, build a new dam. That's not the case. To make this purpose abundantly clear, the statute and report language should spell out the congressional intent that new entrants, including minorities and small businesses, ought to be able to obtain operating authority more easily. Again, this is my personal proposal which has not yet received the Commission's official blessings.

I would like to point out that a recent congressional draft of bus regulatory reform legislation parallels my approach in many ways by adopting an appropriate "fit, willing, and able" test in most instances, and by defining fitness to include operational, financial, and safety fitness. Our staff worked very, very closely with the House Public Works Committee in the drafting of that bus reform legislation, and we're doing everything in our power to see it enacted. I hope we're not going to have to go on playing the silly little game in the bus area as we are in the trucking area and that we can get rid of the ambiguity in both areas. I am in full support of the relaxed entry standards of the bus reform legislation.

Now, we have made reference to the attachments. The only one I would like to call specific attention to for the record, if I may, Mr. Chairman, is appendix No. IV. I do this because I think, once and for all, perhaps these figures will put to rest some of the nonsense about how deregulation has been slowed down to a snail's crawl under Reese Taylor.

Let's look first at the first group in this appendix. These figures, by the way, are routine figures that the Commission keeps on computers and were compiled by Mr. John Surina, who, I believe is here in the room. The second group is done by hand so we don't have them compiled through November 12, but only through October 13.

Insofar as all applications are concerned for the approximately 1-year period July 3, 1980 to June 30, 1981, there were 27,978 applications granted in whole or in part. During the time that I have been on board at the Interstate Commerce Commission, which is just under 4½ months, July 1, 1981 to November 12, 1981, 7,764 applications have

been granted in whole or in part. The grant rate for the prior regime was 95.45 percent versus 95.67 percent since I have been Chairman of the Commission.

More interestingly, let's look at item No. 2 which pertains to nationwide general commodity authority. For the year's period July 3, 1980 to June 30, 1981, there were 47 applications granted in whole or in part, for a grant rate of 83.93 percent. For just 3½ months, from July 1, 1981 to October 13, 1981, we granted more applications than they did in the preceding year, a total of 60, for a grant rate of 91 percent. Now I defy anybody to tell me that that constitutes slowing the deregulatory pace at the ICC to a crawl.

And last, look at the new entrants figure. New entrants means those applicants who have not held prior ICC authority of the type they are in fact applying for. Either they have never had any ICC authority or if they had contract carrier authority, they are applying for common and they have never had that, or they are a common carrier and have never had contract carrier authority. So the requests are by carrier's seeking a new type of authority, not those asking for merely an expansion of authority.

Now in this period, July 3, 1980 to June 30, 1981, granted in whole or in part, were 2,452 applications for a percentage rate, an entrant rate, of 89.72 percent. And in just the under 4½ months that Reese Taylor has been Chairman of the ICC, the fact of the matter is we have granted in whole or in part more applications than they acted upon for new entrants in the entire year they were there. Our grant rate, as opposed to their 89.72-percent rate, is 95.32 percent. And as I say, these are figures right off the computer. They are available for anybody to consider or study further. Mr. Surina is here in the hearing room if anybody wants to know how the figures were compiled and how he maintains his records.

I have not asked that they be maintained. To me, percentage grant rates are something that the media is interested in and some congressional committees seem to be interested in. My purpose is to do my job as the law requires, to look at each application on a case-by-case basis and try and determine, as long as we have the evidence of the public need standard, that the certificate is issued in keeping with the supporting or substantiating evidence.

I thank you very much, gentlemen. I would be happy to answer any questions that you may have. If I've taken too long, I apologize.

[The prepared statement of Mr. Taylor, together with appendixes, follows:]

Prepared Statement of Hon. Reese H. Taylor, Jr.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear here today to present my views with regard to the implementation and effects of the Motor Carrier Act of 1980. In addition to the following statement, I have attached the following: (1) a list of proceedings incidental to the Motor Carrier Act; (2) a list of significant proceedings which are under judicial review; (3) a package of studies and reports that form the basis for the Commission's monitoring of the effects of the Act; (4) various statistics concerning action on applications for authority; (5) my proposal to eliminate the public interest standard in applications for motor common carrier authority; and (6) an excerpt from the entry section of the House Public Works Committee "Discussion Draft" on regulatory reform of the motor bus industry.1/

The Motor Carrier Act of 1980 significantly reformed federal regulation of motor carriers of property. Congressional policies mandated eased entry, rate flexibility, and a reduction in the scope of antitrust immunity. In implementing the Act, I believe

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1/ Designated Appendix I, II, III, IV, V and VI, respectively. The information contained in appendix III may be found in the Joint Economic Committee files.

the Commission has endeavored to promote competition and efficient transportation services in accordance with the objectives of the transportation policy for motor carriers of property, as set forth in 49 U.S.C. section 10101(a)(7).

Although the Motor Carrier Act of 1980 significantly reformed federal regulation of the trucking industry, it did not, as some have been erroneously led to believe, totally deregulate the industry. The Act calls for a "safe, sound, competitive and fuel-efficient motor carrier system" and gives the ICC "explicit direction for regulation of the motor carrier industry, and well-defined parameters within which it may act." Congress warned that the ICC "should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation ..."

The Act requires that efficient and well-managed motor carriers be permitted to earn adequate profits; thus the financial well-being of the industry remains a matter of concern. Other considerations must be taken into account, including: (1) the productive use of equipment and energy resources; (2) service to small communities; and (3), perhaps most importantly, the needs of shippers, receivers and consumers. All of these factors must be considered and balanced as the Commission endeavors to promote competition.

Clearly, the intent of Congress is that the Commission is to reasonably interpret, administer, and enforce the law. In my opinion, the Commission has moved forward in a timely fashion to promote competitive transportation service. In so doing, however, certain interpretations of the relaxed entry standards have been

determined by the Fifth Circuit Court to be inconsistent with the Commission's legislative mandate.2/ At the moment, we are considering whether to appeal the decision or take the case back on remand.

With respect to enforcement, a team has been put together to design an effective program based upon: (1) identifying the areas requiring enforcement to protect the public interest; (2) establishing the priority of various enforcement activities; (3) applying available resources to priority areas to determine the scope of what we can do; (4) preparing a simple, easily understood guide for use by all of our field offices; (5) engendering cooperation with state enforcement and regulatory officials to achieve maximum effectiveness with our minimal resources; and (6) reviewing joint Department of Justice and ICC policies regarding enforcement litigation.

Obviously, an effective enforcement program takes money, and what we are able to implement will depend upon available resources after a review of how best we can utilize the Commission's appropriation of $74.15 million for Fiscal Year '82. In any event, we will do our best to cope with the current high level of unlawful transportation activities. The major goal of our enforcement program will be to protect the public from harm. We are not interested in imposing petty fines or engaging in midnight raids. Our role requires a fine touch and not heavy-handed regulation.

2/ The court pointed out, for example, that since the carrier must be "fit, willing, and able," it is not reasonable to require the applicant to seek authority as broad as the STCC

At my direction, our office and bureau heads were recently asked to review all regulations and recommend those which should be eliminated or revised because they no longer serve the public interest by virtue of being unnecessary, unduly burdensome, or outdated.

While our pending analysis of all ICC regulations was undertaken in the spirit of regulatory reform, the results of our endeavors will obviously impact our enforcement program. With this said, I will now turn to a discussion of the effects of the Act itself.

It appears that the motor carrier industry and the users of its services have responded favorably to the new legislation. The following highlights amplify this point:

1. Since passage of the Act, nearly 5,600 new carriers have applied to the Commission for operating authority. In addition, over 40,000 new certificates have been served during this time. Of these, approximately 17,500 were authorities granted on applications filed under the new statute.

2. Overall, shippers appear to be satisfied with the level of service they are receiving. Since the Act became law on July 1, 1980, monthly complaint levels have generally been

Footnote 2 continued

classification basis or other descriptions at least as broad. Such standards, it held, would require transportation of commodities unrelated to those previously authorized or would require the institution of a different type of service that the carrier is not fit or is unwilling or unable to provide.

lower than they were in the same month of the previous year, although this may be due in part to decreased tonnage caused by depressed economic conditions.

3. Complaint levels from small communities have decreased even more sharply than those from larger communities.

4. Where small community service has changed, it appears in some instances to have improved. Of the shippers surveyed in the first phase of the Commission's statutorily mandated three-phase nationwide small community survey, providing information for the six-month period from July 1980 through December 1980, 13.1 percent said more service was available now than before the Act, 85.2 percent said the availabilty of for-hire truck service was unchanged, while 1.7 percent said service was less available now. Questions about service quality received similar responses: 16.1 percent of those sending freight said their freight arrived loss-free more often, 3.0 percent said less often, and 80.9 percent said freight arrived in good condition with the same frequency as before.

5. There has been greater pricing innovation and more independent ratemaking since passage of the Act. The number of independent rate filings has approximately doubled from 1979 to 1980 and continues to be up in 1981. The vast majority of these are rate reductions, and many

independent filings apply to less-than-truckload as well as truckload traffic. Again, some of the reductions may be due to the economy, but we believe the Act has had a substantial pro-competitive impact. However, we are now beginning to see a number of filings that will have to be carefully examined to make sure they are not predatory or discriminatory.

6. The economic downturn caused industry tonnage in 1980 to drop to its lowest level since 1967. This reduction in traffic has had adverse effects on employment levels and carrier profits. On the other hand, the industry's overall financial results show it to be stronger than in previous periods of recession, although many individual trucking companies are having serious problems. One major carrier has indicated its traffic is only 75 percent of what it was in 1979.

7. Despite the low general business level that prevailed for much of 1979 and 1980, financial data indicate that, overall, the industry is generally sound. The number of motor carriers that have ceased operations was larger in 1980 than in 1979, but this percentage increase is comparable to that experienced by firms in the rest of the economy. The number of firms exiting the industry was higher in 1980 than 1979. While there have been individual business failures, there is no evidence of

widespread business failure, and no indication of a significant increase in concentration.

8. Small general freight carriers experienced slightly greater declines in profitability than larger carriers during the economic downturn and more relaxed regulatory climate in 1980. Class II general freight carriers (those with annual operating revenues of between $500,000 and $3 million) experienced an 8 percent drop in operating income, compared to a 1 percent drop for Class I general freight carriers, which are those with annual operating revenues in excess of $3 million.

9. In response to the revised Transportation Policy in the Motor Carrier Act of 1980, an effort has been initiated to promote greater minority participation in the motor carrier industry. A monitoring program has been instituted and a listing of minorities already established in the industry has been developed. A series of nationwide hearings have been held to determine whether minority carriers encounter any special problems in entering the industry.

Before concluding my remarks, I would like to express my personal views with respect to the continued need for an applicant to present evidence of public need in an operating rights case. I want to emphasize that these are my personal views, as the Commission has not yet taken a formal position on the matter.

After passage of the Motor Carrier Act, broad grants of authority, with respect to both territories to be served and commodities to be carried, were issued. In many cases, these grants exceeded what an applicant requested or what his supporting evidence substantiated. In light of the traditional view of the common carrier obligation, I believe this has created a "Catch-22" situation. On the one hand, the traditional approach requires carriers to provide transportation services in accordance with their certificates. On the other, a carrier cannot realistically be compelled to so serve if it was granted far more authority than requested, warranted, or needed. In a recent court decision, the Fifth Circuit Court of Appeals has held that insofar as commodities are concerned, the Commission exceeded its authority under the Motor Carrier Act by requiring overly broad grants of authority.

In light of the many broad grants of operating authority that have been issued to carriers in the last several years, the Commission is currently reexamining the scope of the common carrier obligation. Alternative methods of determining the scope of the obligation have been proposed, such as allowing a carrier to determine the extent of its own holding out, either by reference to filed tariffs or more informally through advertising brochures and other materials furnished to shippers. We are now considering the issue and a decision should be forthcoming soon.

If little remains of the common carrier obligation, then I do not believe there is any real point in maintaining the entry standard of the 1980 Act which requires the submission of

"evidence that the service proposed will serve a useful public purpose responsive to a public demand or need." What is the point in carefully sculpting a certificate if the Commission is neither able nor disposed to require that a carrier provide reasonable service in accordance with its described operating authority? In such circumstances, I belive that perpetuating the "evidence of public need" standard amounts to putting form over substance. We are simply not going to have the resources to engage in what has already become a meaningless exercise in futility for both the Commission and the motor carrier industry. This is particularly true in light of the fact that as a result of the past grants of broad authority, the horse is already out of the barn!

What we should have is a precise "fit, willing, and able" test which is carefully crafted so it doesn't fluctuate in severity or laxity with a change in administrations. All carriers, regardless of size, should have the same opportunity to compete. This is too important to be left to the whim and caprice of individuals.

Attached to this statement is a preliminary draft of legislative language which would make changes of the nature I have just discussed. I want to emphasize, however, that the "fit, willing, and able" test should be one which does <u>not</u> reinstitute entry barriers! The purpose of my proposed revision is to further relax entry standards in keeping with Congressionally prescribed standards, and not to create any new barriers. To make this purpose abundantly clear, the statute and report language should spell out the Congressional intent that new entrants, including minorities and small businesses, ought to be able to obtain operating authority more easily. Again, this is my personal

proposal which has not yet received the Commission's official blessings.

I would like to point out that a recent Congressional draft of bus regulatory reform legislation parallels my approach in many ways by adopting an appropriate "fit, willing, and able" test in most instances, and by defining fitness to include operational, financial and safety fitness. I am in full support of the relaxed entry standards of the bus reform legislation, and my staff has worked closely with the House Public Works Committee in drafting such legislation.

This concludes my remarks, but if you have any questions, I would be happy to answer them.

APPENDIX I

PROCEEDINGS INCIDENTAL TO MOTOR CARRIER ACT OF 1980

NUMBER	TITLE/DESCRIPTION	STATUS	JUDICIAL REVIEW (COURT)
Ex Parte No. MC-42	- Handling of C.O.D. Shipments	NPR - 3-26-81	
Ex Parte No. MC-43 (Sub-No. 11)	- Lease and Interchange of Vehicles	NPR - 11-3-80	
Ex Parte No. MC-43 (Sub-No. 12)	- Leasing Rules Modifications	NPR - 2-27-81	
Ex Parte No. MC-45 (Sub-No. 1)	- Interpretation of Commodity Classification: Wood Chips	Final Commodity Interpretation - 6-25-81	
Ex Parte No. 55 (Sub-No. 42)	- Dual Operations Policy	Deletion of Rule - 7-2-80	
Ex Parte No. 55 (Sub-No. 43)	- Rules Governing Applications for Operating Authority	Interim Rules - 7-2-80	(5th-81-4072
Ex Parte No. 55 (Sub-No. 43A)	- Acceptable Forms of Requests for Operating Authority	Final Rule - 12-24-80	(D.C.-80-2062
Ex Parte No. 55 (Sub-No. 43B)	- Acceptable Forms of Requests for Operating Authority: Hazardous Materials	Prop.Policy State. 7-2-80; Policy State. 12-24-80	(5th-81-4026
Ex Parte No. 55 (Sub-No. 44)	- Rules Governing Finance Applications	Prop. Policy State.- 4-22-81 Interim Rules-7-2-80 Final Rule-1-16-81	
Ex Parte No. 55 (Sub-No. 45)	- Appellate Procedures	Interim Rules-7-9-80 Final Rule- 4-8-81	
Ex Parte No. MC-67 (Sub-No. 6)	- Elimination of Notification Procedure in the Processing of Emergency Temporary Authority. Applications under 49 USC 10928	Notice of Proposed Rules- 1-25-80 Proposed Rules - 2-23-81	
Ex Parte No. MC-67 (Sub-No. 8)	- Rules Governing Temporary Authority and Emergency Temporary Authority	Notice of Proposed Rules - 2-23-81	
Ex Parte No. MC-67 (Sub-No. 9)	- Revised Temporary Authority Rules	Final Rules - 7-2-80	
Ex Parte No. MC-75 (Sub-No. 2)	- Agricultural Cooperative Exemption	Final Rules - 7-2-80	
Ex Parte No. MC-77 (Sub-No. 3)	- Elimination of Certificates as the Measure of 'Holding Out'	NPR - 1-22-81; Oral Argument - 10-1-81	
Ex Parte No. MC-79 (Sub-No. 1)	- Control of Duplicate Operating Rights	NPR - 5-12-81	

PROCEEDINGS INCIDENTAL TO MOTOR CARRIER ACT OF 1980

NUMBER	TITLE/DESCRIPTION	STATUS	JUDICIAL REVIEW (COURT)
Ex Parte No. MC-82 (Sub-No. 3)	- New Procedures in Motor Carrier Revenue Proceedings (Notice Period & Protest Rules)	Decision - 7-23-80	
Ex Parte No. MC-88	- Detention of Motor Vehicles - Nationwide	NPR - 3-11-81	
Ex Parte No. MC-88 (Sub-No. 1)	- Detention of Motor Vehicles - Alaska	NPR - 3-11-81	
Ex Parte No. MC-98 (Sub-No. 1)	- Investigation Into Motor Carrier Classification	Interim Decision - 5-13-81	
Ex Parte No. MC-122 (Sub-No. 1)	- Implementation of Intercorporate Hauling Reform Legislation	Notice of Final Rules- .....(5th-81-7092 12-24-80	
Ex Parte No. MC-122 (Sub-No. 2)	- Lease of Equipment and Drivers to Private Carriers	Proposed Policy Statement - 12-24-80; Oral argument - 10-14-81	
Ex Parte No. MC-122 (Sub-No. 3)	- Interpretation - Intercorporate Hauling	Pet.-Declaratory Order- 12-24-80;Final Rule-12-24-80	
Ex Parte No. MC-128	- Revenue Need Standards in Motor Carrier General Increase Proceedings	Oral Argument - 7/29/80	
Ex Parte No. MC-137	- No Suspend Zone -- Motor Common Carriers of Property	NPR - 1-28-80 Discontinued - 5-22-81	
Ex Parte No. MC-141	- Policy Statement on Motor Carrier Pooling Applications	Notice of Prop. to Issue State. of Gen. Policy-7-11-80; Final Rules-4-10-81	
Ex Parte No. MC-142	- Elimination of Gateway Restrictions and Circuitious Route Limitations (49 CFR Part 1042)	NPR - 9-16-80 Final Rule - 12-24-80	
Ex Parte No. MC-142 (Sub-No. 1)	- Removal of Restrictions from Authorities of Motor Carriers of Property (49 CFR Parts 1137 & 1002.2)	NPR - 9-16-80 .....(5th-81-4026 Final Rule - 12-24-80	
Ex Parte No. MC-143	- Owner-Operator Food Transportation (49 CFR Parts 1138 and 1311)	NPR - 9-16-80 Final Rule - 3-31-81	

PROCEEDINGS INCIDENTAL TO MOTOR CARRIER ACT OF 1980

NUMBER	TITLE/DESCRIPTION	STATUS	JUDICIAL REVIEW (COURT)
Ex Parte No. MC-145	- Cancellation of Motor Carrier Joint Rates and Through Routes	NPR - 11-26-80 Final rules ppstponed	
Ex Parte No. MC-147	- Information Required on Receipts and Bills--Responsibility for Loading and Unloading Motor Vehicles	NPR - 10-23-80	
Ex Parte No. MC-150	- Minority Participation in the Motor Carrier Industry	Policy Statement - 1-8-81	
Ex Parte No. MC-152	- Policy Statement Regarding Duplicate Operating Rights	Proposed Policy Statement-5-12-81	
Ex Parte No. 230 (Sub-No. 6)	- Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and other Motor Carriers)	Notice of Proposed Rule - 2-19-81	
Ex Parte No. 261 (Sub-No. 1)	- In the Matter of Tariffs Containing Joint Rates and Through Routes--Freight Forwarders and Nonvessel Operating Common Carriers by Water (NVO)	NPR - 12-24-80 Final Rules - 7-9-81	
Ex Parte No. 297	- Rate Bureau Investigation (Shipper-Affiliation) (Notice of Reopening of Proceeding)	Notice Reopening Proceeding-1-21-81 Discontinued - 11-4-81	
Ex Parte No. 297 (Sub-No. 5)	- Motor Carrier Rate Bureaus--Implementation of P.L. 96-296	Notice-Frop.Policy & .....(5th-80-7674 Int. Requirements- 8-21-80; Decision- 12-30-80; Dec.-5-11-81	
Ex Parte No. 364 (Sub-No. 1)	- Freight Forwarder Contract Rates - Implementation of P.L. 96-296	NPR-8-7-80 Decision-12-24-80	
No. MC-C-3437 (Sub-No. 12)	- Ex-Air Motor Traffic	Final Rules-7-3-80	
No. MC-C-10792	- Petition for Declaratory Order-Livestock and Poultry Feed Exemption	Notice of Declaratory Order Proceeding-1-6-81; Notice of Final Rule-4-1-81	

PROCEEDINGS INCIDENTAL TO MOTOR CARRIER ACT OF 1980

NUMBER	TITLE/DESCRIPTION	STATUS	JUDICIAL REVIEW (COURT)
No. MC-C-10796	- Shipments Weighing 100 Pounds or Less	Notice of Declaratory Order Proceeding - 3-18-81; Final Rules - 9-10-81	
No. 37416	- Identification of Rates Filed Under Zone of Rate Freedom by Motor Common Carriers of Property and Freight Forwarders	Final Rules - 8-1-80	
No. 37465	- Business Entertainment Expenses	NPR - 1-9-81	

APPENDIX II

JUDICIAL REVIEW OF MAJOR COMMISSION DECISIONS
SINCE ENACTMENT OF THE MOTOR CARRIER ACT OF 1980

Commission Proceeding	Substance	Court Proceeding	Status
Ex Parte No. 297 (Sub-No. 5), Motor Carrier Rate Bureaus - Implementation of Pub. L. 96-296.	Implements Section 14 of the Act by interpretive rules as to what the Act requires of rate bureaus. Petitioners oppose Commission rejection of tariffs formulated in violation of rate bureau procedures, and they object to the rule permitting carriers to exercise their right of independent action to instruct rate bureaus not to give advance notice of the independently filed rates. Petitioners also assert that the Commission has no authority to promulgate the rules and that the rules are procedurally defective.	American Trucking Associations, et al. v. United States, No. 80-7674 (5th Cir.)	Briefed and awaiting assignment for oral argument.
Ex Parte No. 55 (Sub-No. 43), Rules Governing Applications for Operating Authority.	Interim rules implementing Sections 5 and 25 of the Act governing operating authority applications. The interim rules were replaced by final rules and are no longer effective.	H. S. Anderson Trucking Co., et al. v. ICC, No. 80-2062 (D.C. Cir.)	Dismissed as moot on issuance of final rules.
	Final rules went into effect February 9, 1981	American Transfer and Storage Co. et al v. ICC, No. 81-4072 (5th Cir.)	Briefed and by the Court's order "held pending decision in 81-4026" (the proceeding reviewing 55(43A) and 142(1)

Commission Proceeding	Substance	Court Proceeding	Status
MC-124920 (Sub-No. 14)F, La Bar's Inc., Extension - Mountaintop Insulation.	This proceeding involves the issue of interpreting the 1980 Act as to the relative burdens of proof of applicants and protestants in motor carrier licensing proceedings. Presently pending before the Commission on remand to re-evaluate the strict burden of proof placed on protestants as to what degree of injury to protestants and the public warrants denial of an application for new service.	North East Express, Inc., et al. v. ICC, No. 80-1022 (3rd Cir.)	Reopened by Commission to consider an issue of general transportation importance.
Ex Parte No. 55 (Sub-No. 43A), Acceptable Forms of Request for Operating Authority (Motor Carriers and Brokers of Property).	Policy statement of guidelines as to the minimum kinds of territorial and commodity descriptions for authority applications to implement Sections 4 and 6 of the Act. Petitioners in court object that the Commission's interpretation that, under the Act, an application for authority should not be less than for a county in territory nor less than one of the Standard Transportation Classification Code's listing for commodities, is too broad an interpretation.	American Trucking Associations, et al. v. ICC, No. 81-4026 (5th Cir.)	Remanded by the Court on October 1,1981. The Court found (1) the policy statement in fact contained binding rules; (2) the broad acceptable commodity classifications and grants of bulk and household goods authority to general commodities carriers are unreasonable unless carriers prove that they are fit, willing, and able; and (3) absent a showing of fit, willing and able, authority to serve Alaska and Hawaii is unreasonable.

Commission Proceeding	Substance	Court Proceeding	Status
Ex Parte No. MC-142 (Sub-No. 1), Removal of Restrictions from Authorities of Motor Carriers of Property.	Rules implementing Section 6 of the Act to govern removal of unreasonable or unduly narrow restrictions from motor carrier authorities. Petitioners in court assert that the Commission's interpretation that carriers should be allowed to broaden existing authority territorially to counties and to expand their commodity authorizations to the listings in the Standard Transportation Classification Code is too broad.	American Trucking Associations, et al. v. ICC, No. 81-4026 (5th Cir.)	Remanded by the Court on October 1, 1981. The Court found (1) that the guidelines were in fact rules; (2) that the rules were improper because (a) they exceed the statutory directive to broaden reasonably existing certificates; (b) the requirement that all applicants seeking broader authority fit the descriptions into fixed molds was unreasonable; and (c) allowing general commodities carriers to haul bulk and household goods is invalid because the carriers might not be fit, willing and able to provide the broadened service.
Ex Parte No. MC-122 (Sub-No. 1), Implementation of Intercorporate Hauling Reform Legislation.	Rules implementing Section 9 of the Act by prescribing procedures for corporations seeking to initiate compensated intercorporate hauling. In court, petitioners argue that the Commission has improperly permitted transportation-only subsidiaries, including regulated motor carriers, to engage in compensated intercorporate hauling.	American Trucking Associations, et al. v. ICC, No. 81-7092 (5th Cir.)	Briefed and awaiting assignment for oral argument.

Commission Proceeding	Substance	Court Proceeding	Status
Ex Parte No. MC-143, Owner-Operator Food Transportation.	Adopts new rules to implement Sections 5(a)(3) and 10(a)(2) of the Act enabling owner-operators to obtain operating authority to transport food and other edible products. Petitioners in court assail the Commission's definition of the term "owner" in the Act as being "any person with an ownership interest of 10 percent or greater in the motor vehicle."	American Trucking Associations, et al. v. ICC, No. 81-1602 (D.C. Cir.)	Held in abeyance in Court while petitioners file successive pleadings before the Commission. The Commission is now considering those petitions.
MC-78786 (Sub-No. 281)F, Pacific Motor Trucking Co. Ext.-Nationwide General Commodities	In this proceeding, applicant, a wholly-owned subsidiary of a railroad, was granted unrestricted nationwide general commodities authority. Petitioners in court challenge the failure of the Commission to find "special circumstances" warranting an unrestricted grant of authority to a rail-owned motor carrier. Issue is the continued viability of the special circumstances doctrine in light of the Motor Carrier Act, the Staggers Act, the 4R Act and the 3R Act.	American Trucking Associations, Inc., et al. v. ICC, No. 81-4389 (5th Cir.)	Stay denied; now pending briefing on an expedited schedule.

JUDICIAL REVIEW OF MAJOR COMMISSION DECISIONS SINCE ENACTMENT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT

Commission Proceeding	Substance	Court Proceeding	Status
Ex Parte No. MC-19 (Sub-No. 36), Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations.	Adopts new rules replacing former operational regulations to conform to mandates of the Act as to paperwork reduction, rate and service options, performance standards, etc. Petitioners in court assert that the new household goods regulations (49 C.F.R. 1056) are contrary to the 1980 statute, because the regulations impose a substantial paperwork and regulatory burden on the carriers. Specific requirements challenged include: shipper-complaint recordkeeping requirements, procedures for estimating charges, the requirement of an "order for service" separate from the bill of lading, procedures for reducing charges collected at delivery if goods are lost or damaged, and inclusion of commercial shippers within the class protected by the regulations.	North American Van Lines, et al. v. ICC, No. 81-1724 (7th Cir.)	Court stayed the rules pending review. Briefed and argued, awaiting court decision.

APPENDIX IV

I. ALL APPLICATIONS	7/3/80 to 6/30/81		7/1/81 to 11/12/81	
GRANTED IN WHOLE OR IN PART	27,978	(95.45%)	7764	(95.67%)
DENIED OR REJECTED	361	(1.23)	307	(3.78)
ABORTED	928	(3.17)	28	(0.28)
OTHER	44	(0.15)	16	(0.20)
TOTAL	29,311	(100%)	8115	(100%)

II. NATIONWIDE--GENERAL COMMODITY	7/3/80 to 6/30/81		7/1/81 to 10/13/81	
GRANTED	47	(83.93%)	60	(91.0%)
DENIED	9	(16.05)	6	(9.0)
TOTAL	56	(100%)	66	(100%)

III. NEW ENTRANTS	7/3/80 to 6/30/81		7/1/81 to 11/12/81	
GRANTED IN WHOLE OR IN PART	2452	(89.72%)	2525	(95.32%)
DENIED OR REJECTED	70	(2.56)	106	(4.00)
ABORTED	66	(2.41)	10	(0.38)
Other	145	(5.31)	8	(0.30)
TOTAL	2733	(100%)	2649	(100%)

APPENDIX V

LANGUAGE AMENDING THE INTERSTATE COMMERCE ACT

(a) Section 10922 of title 49, United States Code is amended by deleting subsection (b) and in lieu thereof inserting a new subsection (b) as follows:

"(b)(1) Except as provided in this section, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of property if the Commission finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission.

"(2) The requirement that persons issued certificates under this subsection be fit, willing, and able includes financial fitness, operational fitness, and safety fitness.

"(3) Notwithstanding any other provision of law, any carrier holding authority to transport shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, and operating one or more commercial motor vehicles with a gross vehicle weight rating of 10,000 pounds or more shall be subject to commercial motor vehicle safety regulations promulgated by the Secretary of Transportation pursuant to this title with respect to its entire operations,

including the operations of commercial motor vehicles with gross vehicle weight ratings less than 10,000 pounds.

"(4) The Commission shall streamline and simplify, to the maximum extent practicable, the process for issuance of certificates with respect to transportation by motor vehicle of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers if--

(A) such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations; and

(B) after issuance of the certificate, such transportation (measured by tonnage) does not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the jurisdiction of the Commission under section 10526(a)(6) of this title and the owner of the motor vehicle certifies to the Commission annually that he is complying with the provisions of this clause and provides to the Commission such information and records as the Commission may require.

"(5) No motor common carrier of property may protest an application to provide transportation filed under this subsection except on the ground that applicant is not fit, willing, or able to provide the proposed transportation. Such protest may only be filed by a motor common carrier of property if ---

(A)(i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied; and

(ii) it has performed service within the scope of the application during the previous 12-month period or has actively, in good faith, solicited service within the scope of the application during such period; or

(B) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

"(6) No motor contract carrier of property may protest an application to provide transportation filed under this subection.

(b) Section §10922 of title 49, United States Code is amended by deleting subsection (f) and inserting in lieu thereof the following new subsection:

"(f)(1) A motor common carrier may provide transportation under a certificate only if the carrier complies with conditions the Commission finds are required to carry out requirements established by the Commission under this subtitle.

"(2) The Commission may prescribe necessary conditions under which a water common carrier provides transportation, including conditions on extending routes of the carrier.

"(3) The Commission may prescribe conditions when the certificate is issued and at any time thereafter. The Commission may not prescribe a condition preventing--

(A) a motor common carrier or water common carrier from adding to its equipment and facilities or its transportation within the scope of the certificate to satisfy business development and public demand; or

(B) a water common carrier, if the carrier has authority to provide transportation over completed parts of a waterway project authorized under law, from extending its transportation over the uncompleted parts of the project when opened for navigation to satisfy business development and public demand.

(c)(1) Section 10762(a)(1) of title 49, United States Code is amended by deleting the phrase "section 10922(b)(4)(E)" and inserting in lieu thereof "section 10922(b)(4)."

(2) Section 10762(g) of title 49, United States Code is amended by deleting the phrase "section 10922(b)(4)(E)" and inserting in lieu thereof "section 10922(b)(4)."

HDM249

APPENDIX VI
HOUSE PUBLIC WORKS COMMITTEE "DISCUSSION DRAFT"
ENTRY LANGUAGE

[DISCUSSION DRAFT]

November 4, 1981

MOTOR CONTRACT CARRIERS

SEC. 13. (a) Section 10923(b) of title 49, United States Code, is amended--

(1) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

''(2) The provisions of paragraph (2) of subsection (a) of this section shall not apply to applications under this section for authority to provide transportation as a motor contract carrier of passengers. The requirement that persons issued permits under this section as motor contract carriers of passengers be fit, willing, and able includes, among other things, financial fitness, operational fitness, and safety fitness.''; and

(2) by adding after paragraph (7) the following new paragraph:

''(8) No permit authorizing transportation of passengers as a motor contract carrier shall be issued under this section to any foreign person unless such person's country grants authority to persons from the United States to provide transportation of passengers by motor vehicle in such country.''.

(b) Subsection (e) of section 10925 of title 49, United States Code, is amended--

(1) by striking out ''of property'' each place it

appears;

(2) by striking out ''section 10922(b)'' and inserting in lieu thereof ''section 10922'' each place it appears; and

(3) in paragraph (2)--

(A) by striking out ''transportation''; and

(B) by striking out ''of the same property'' and inserting in lieu thereof ''the same type of transportation''.

Representative REUSS. Thank you, Chairman Taylor.
Congressman Wylie.
Representative WYLIE. Thank you very much, Mr. Chairman.

INTENTION OF MOTOR CARRIER ACT TO DEREGULATE?

Chairman Taylor, do you think that it was a matter of Congressional intent in the Motor Carrier Act of 1980 to deregulate the trucking industry?

Mr. TAYLOR. I really don't like to use the word deregulation. I think that's one of the problems I've had since I've gotten here. Lots of people believe that the legislation was a "trucking deregulation" bill.

The fact of the matter is, it instituted a tremendous amount of reform, but it did not totally deregulate everything.

The second problem I've had to deal with was that the group that preceded me simply interpreted the act as one to only promote competition. Along comes a guy who happens to be a lawyer, who takes an oath that he has to uphold the act and does something that smacks of regulation and he's trying to put the toothpaste back in the tube; he's trying to turn the clock back.

The fact of the matter is, it's not a total deregulation bill. I think it's a step down the path of deregulation, and I want to keep that momentum moving. The difference between myself and the prior group is that I think the extent to which we go down that path and the pace at which we travel are issues and matters which Congress must decide.

I think we are at the ICC to implement and administer the law in accordance with the intent of Congress and not to tamper with it and play with it and try to achieve some preconceived notion simply because we're embittered about not having a total deregulatory bill. That isn't what Congress passed.

Representative WYLIE. Well, I certainly like the thrust of that latter statement about following congressional intent.

HAS WHITE HOUSE GIVEN ICC GUIDANCE?

Has the resident or the administration or any administration official suggested a more free market approach toward deregulation?

Mr. TAYLOR. I understand that before I arrived in the room one of the panelists proceeded to tell this committee that I had been called down to the White House and had a meeting with the President at the White House and discussed regulatory philosophy.

Let me tell you that I have never had a meeting in the White House or with the President of the United States other than at two receptions that I have attended, one for the Republican National Committee and one for new appointees in which we listened to a few words and went through a line and shook hands and told the President how glad we were to be there. I have never had a meeting in the Oval Office, and anybody who has described such a meeting has perpetrated a falsehood on this committee because that has not occurred. Also, I have never had any direction or guidance from the administration or from any official of the administration as to where they wanted to see us go.

I have asked a couple places here and there and simply been told, "Look, we brought you to town because we feel you're a competent guy to administer this agency and that's what we expect you to do." I have

never once been told by anybody in this administration at any level that "We expect this, that, or the other thing to happen," and anybody who has so indicated that to this committee is simply not telling the truth.

Representative WYLIE. What you're saying is you're not really looking for direction in that regard from the administration; rather, you think the authority has been delegated to you and you're following the statute as you see it?

Mr. TAYLOR. I looked for it. I took Marty Anderson to lunch with me one day, and I tried to get him to tell me where he thought we ought to be going. So I have looked, and I have not been told. That's the state of the record.

"FIT, WILLING, AND ABLE" STANDARD

Representative WYLIE. You mentioned a Fifth Circuit Court of Appeals case on this question of the evidence of public need standard, and then you suggested another standard of fit, willing, and able to receive operating authority. Why do we even need that? Why do we need to regulate entry at all?

Mr. TAYLOR. Well, the problem is that if you don't have a basic fit, willing, and able standard, then anybody—including a two-bit hoodlum, a person who has no regard for safety considerations, or somebody who may operate without insurance—will just simply go out and get a truck and operate. I think public safety and public interest considerations dictate that we have at least some handle on who puts a truck out there on the road.

One of the problems we're having at the moment, frankly, is that the fitness, willingness, and ability standard has been largely ignored. Much of the so-called new competition that is out there is now comprised of people who don't keep any records, or who function from a truck stop and can't be reached. And I think the public in this country deserves something more than that.

We've got the finest transportation system in the world, and it seems to me there are some public safety standards and public interest standards, as a bare minimum, that ought to be kept. Please believe me, I'm not suggesting that we go through any kind of a rigorous holding the feet to the fire test to create a new barrier. They have a very simple application form in Nevada which simply asks a fellow to tell how many trucks he has, what he essentially wants to do, what kind of terminal facilities he has. He doesn't have to be a Rockefeller or Kennedy to get authority. Only a simple financial statement is needed to insure that safety is going to be followed and adhered to. That's all I'm talking about. I think the public deserves no less than that.

HAS MOTOR CARRIER ACT INCREASED COMPETITION?

Representative WYLIE. You have touched on this, but I have a specific question. How effective has the Motor Carrier Act of 1980 been in improving competition in the trucking industry?

PROBLEM OF "PREDATORY" PRICING

Mr. TAYLOR. I think it's been very effective, and I think that's a great thing. To me, the ballgame today is no longer over this matter of entry. I think that's passé and behind us. I think where we are

today is what are we going to do about rates? We've got all this enhanced competition now. Everybody is out there ready to go. The question is, is the Commission now going to turn its back on blatantly predatory or discriminatory pricing? Because if we do—and I don't want to argue with the economists about this but it happens to be my opinion—what's going to ultimately happen is the shakeout that everybody envisions is not going to be on the basis of efficiency but, rather, on the basis of the size of a carrier. The big guys are going to survive regardless of the regulatory environment; and as far as I'm concerned the dessert, so to speak, of the enhanced competition is supposed to be for somebody else other than just Sears Roebuck and General Electric. There isn't any free lunch. Yes, there are economies of scale, but you can get to a point where a 50-percent discount really isn't justified and as there isn't any free lunch, somebody has to pay for that. And who does? The small shippers do. And I don't think that's what this act was intended to do. When you get into discriminatory rates and predatory rates the little guys can't afford, all you're really doing is saying, we'll let the big guys have it. And I promise you, it won't be long—that's the quickest way to have more regulation—before somebody is going to come charging out of the woods and say, "We only save a handful of these big companies left and we'd better do something about it." That's the thing I don't want to see happen.

So I think the ballgame really is today in the rate area.

Representative WYLIE. Thank you very much, Chairman Taylor. You have certainly been a positive and articulate witness and have presented it very well.

Mr. TAYLOR. Thank you, sir.

CLARIFICATION OF WHITE HOUSE MEETING STORY

Representative REUSS. You have corrected the record on this White House meeting. I should say, in connection with the member of the panel who testified to that before, that he did not say that as a matter of objective reality there was this meeting between you and the President. He merely said that Business Week had reported it. And since Business Week, like most publications, will not reveal its sources, we necessarily accept your statement.

Mr. TAYLOR. Business Week hasn't written an accurate story about me yet, Mr. Chairman. We've tried and tried.

Representative REUSS. Well, history will have to record the rights or wrongs of that, but let me say that you have corrected the record on the meeting.

WHY NO GUIDANCE FROM WHITE HOUSE?

I'm a little upset, frankly, that the administration hasn't provided any guidance for you, as you testified, and that you actually had to lobby with the administration to take the director of the White House economics to lunch to try to get some guidance in an area dropped from God.

Mr. TAYLOR. I did have a meeting with Ed Meese in the White House which he invited me to attend, a meeting at which two or three persons were present, but he simply said, "We are inviting all of the

agency heads to come," and we didn't even get close to regulatory philosophy. It didn't even come up. That's my point. I have never had any direction from anybody. It was just a very friendly meeting I thought, having arrived in June and having known all of those fellows so well. I really—you're absolutely right—have not had any guidance. I think they feel concerned about giving us any because at that meeting with Mr. Meese, Mr. Fielding was present and they were very concerned about saying, "This is the way you should go," or "This is the way you should go." They conceive of the ICC as an independent agency, as an arm of Congress, and I think the feeling is I was put down here to implement the congressional will and it's not up to them to try and steer my boat.

Representative REUSS. That puzzles me a bit because it does seem to be odd that they should display such exquisite sensitivity to the independence of the ICC when they didn't have a bit of scruples about telling the Federal Reserve, who's also an independent agency, wherein it should conduct its monetary policy. But that, too, is for the historian.

STATED OBJECTIVE OF ADMINISTRATION

However, though Mr. Meese told you nothing about what the ICC ought to be doing and though Mr. Martin Anderson told you nothing of that, and although you have not seen the President on that since your appointment——

Mr. TAYLOR. I have not. I'd love to, frankly, but I haven't.

Representative REUSS [continuing]. The fact is that Mr. Reagan has announced a policy in his letter to the American Farm Bureau Federation in which he said the Reagan-Bush administration will define the role of Government in transportation and will permit the free market to promote competition, improve efficiency and reduce costs, and then he said, "Our objective will be to deregulate and revitalize the entire transportation industry, rail, highway, and water."

You're familiar with that?

CHAIRMAN TAYLOR'S PHILOSOPHY ON DEREGULATION

Mr. TAYLOR. I'm familiar with that, and I'm in total agreement with those objectives. I rather think that if the administration felt that I was doing anything inconsistent with those objectives that I'd have heard from them by now. I am dedicated to those objectives as well, Mr. Chairman, and I've heard of that presentation and that's exactly the direction in which I see us going.

Again, however, I must point out, it seems to me that how far we travel down the path and, more particularly, how fast we travel, is really for Congress to determine and it's not up to me. I envision my role as primarily one to administer and implement the law. I think it's up to us to come forward with suggested change when warranted and we will do that, as witness the suggestion that the evidence of public need standard be deleted. But I do want to move down the deregulatory path. I wouldn't have taken this job if I had any other objective in mind.

ROADWAY EXPRESS CASE

Representative REUSS. Let me refer you to a few specifics. On September 14 last, the ICC handed down its decision in the so-called Road-

way Express case. There, a trucking company was concerned that when it hauled goods out to the Pacific Northwest it had to return its trucks empty, with a shocking waste of diesel fuel and truck drivers' productivity. And so it asked permission of the ICC to do what any business tends to do when it wants to add to the business; namely, to introduce a discount rate for the return haul so that a shipper could get as much as 50 percent discount for filling those empty trucks on the way back from the Northwest.

The Commission, fortunately, by majority vote, went along with that request and thus gave the shippers and inflation-fighters a break. You, however, dissented.

Now I believe that you were within your statutory parameters in dissenting. I think on hundreds of these cases honest commissioners can go either way.

WERE DISCOUNTS ILLEGAL?

Do you take as charitable a view of the action of the majority of the board in that case who did vote to let Roadway cut prices? Do you think they were operating within their discretionary parameters or were they guilty of malfeasance and should they be prosecuted to the full extent of the law and sent to jail for a while?

Mr. TAYLOR. I hope that doesn't happen to any of us, Congressman.

Representative REUSS. Well, I'm serious. You don't think they were law violators?

Mr. TAYLOR. There's always room for disagreement. That's why we have more than one commissioner.

Representative REUSS. That may be so, and I completely agree with you. I think both you and the majority can disagree just as in many instances in our administrative and judicial system there's a majority and minority.

That being so, however, and if the decision of the Commission to allow Roadway to make that discount, to lower that price in order to fill its trucks was within the statutory parameters, the statute can't be all bad, can it?

Mr. TAYLOR. Well, I didn't view it as being within the statutory parameters. Again, this is one of those areas of interpretation, and having gotten into a discussion of predatory and discriminatory rates, I think one of the things the Commission is going to have to do very quickly is at least come up with a rulemaking to indicate what we believe in fact are predatory and discriminatory rates, and it's going to have to be road-brush. We are not going to be able to come up with a rulemaking that applies to every situation.

CHAIRMAN EXPLAINS ROADWAY DISSENT

I would like to go back to the dissent in that decision because it wasn't that I disagreed with the action that was filed for. It was simply that under the statute Roadway did not provide us with the information that I felt was necessary to arrive at a determination that I felt the statute required. I think my dissent really speaks for itself. The key to it is the third paragraph in which I clearly stated that promotional discounts of 30, 40, and 50 percent may not necessarily

result in predatory rates. However, when the issue is raised, as it was by protest, and with regard to discounts of that magnitude—and I think you concede that's a pretty hefty discount—I felt it was incumbent on the proponent to at least deny that allegation of a predatory rate.

Roadway didn't even take the trouble to say to the Commission, "It's not predatory." Not only did they not give us any information after it was protested, but they didn't even take the time or trouble to say to the Commission that it's not predatory. They just went ahead and did it anyway. The only evidence that they did provide us with is the fact that this was just a promotional rate, and they made the analogy to a retail store having a sale in a shopping center or to the airline industry. And my vote was to obtain the information upon which the Commission could arrive at a reasoned judgment.

I felt we had a record that had absolutely nothing in it. With even a minimum amount of submission of evidentiary support, it seems to me they probably could have justified their filing. But the fact is, we've received none of that support. We had no record whatsoever, and I felt under those circumstances the statute simply required me to vote as I did, to obtain the information upon which a reasoned judgment could be made.

Representative REUSS. I wasn't there at the proceedings, but I would imagine that Roadway was saying, "Look, Mr. ICC, we're hauling these trucks back empty over the Continental Divide without any cargo in them and how about letting us haul some goods at half price?" In other words, as the lawyers say, the thing speaks for itself. But let us pass that. You did delineate your position in the Roadway case clearly and that's exactly what you should do.

WHY MORE TARIFF EXAMINERS?

You have asked for a good deal of additional personnel for the ICC at a time when the other regulatory agencies are cutting down on their requests for personnel, particularly in the so-called tariff examiners. Isn't laying on those additional tariff examiners simply going to add another fussy bureaucratic intrusive, pedantic element? Aren't the new tariff examiners going to try to justify their existence by putting in a lot of barriers where nobody has protested and a carrier has filed? I think you're going back to the bad old days. What about that?

Mr. TAYLOR. We really aren't, Mr. Chairman. To start off with, under the $79 million, we were talking about five or six additional people. With the present budget, we're probably not even going to be able to afford those.

Let me just say a word about tariff examinations. I was shocked, after having been at the Commission for about a month, to be told one day by our Director of the Bureau of Traffic, Martin Foley, "You know, we've not had an examination tariff program at the ICC for 2 years. Anybody can file anything they please up there." In response to a congressional request we found one tariff which provided for an interest charge on a cash payment. I can't tell you the unbelievably ridiculous things that are undoubtedly on file up there because for 2 years the Commission has done nothing but look at the title page and throw it in the bin.

The trouble is, once it receives the ICC's stamp of approval and everybody knows it's been filed at the Commission, it becomes legitimatized. It's got the "Good Housekeeping" seal of approval on it, and shippers are intimidated to question it.

If we're not going to examine tariffs, we're going to allow everybody to file whatever they please up there.

MUST ICC INITIATE TARIFF REVIEWS?

Representative REUSS. Why don't you get out a rule to that effect tomorrow and make the country breathe a sigh of relief?

Mr. TAYLOR. I can't do that, Mr. Chairman, because there's a law on the books that requires us to file tariffs and to review them. If Congress wants to take that action, fine; I will be happy to do it.

Representative REUSS. Certainly under the law you could file a rule saying that while, of course, you reserve that investigatory power, that in fact you have not been reviewing them and that you perceive no great harm in just intervening where somebody somewhere calls your attention to some irregularity and maybe setting up some kind of procedure so that grassroots people around the country know what's going on. But I think you could use 250 million Americans as your tariff examiners and not have to hire more of them to mess around with all these papers.

Mr. TAYLOR. Some of the astute shippers have very, very high geared tariff specialists, and they're tuned in. Many others don't. Many small shippers don't. The fact of the matter is, though—and I don't want to keep putting the ball back in Congress court—if Congress determines that we should not accept tariffs and that we shouldn't review them and we should in effect let anybody charge whatever they please and let the marketplace be the sole determination, fine. I'm perfectly willing to do that. I don't have any preconceived notions for or against how far we do down this deregulatory path. I have tried to say that over and over again. I'm here to implement the will of Congress. But at the present time, we happen to have a section 10761 which says that transportation is prohibited without a tariff. And, as long as that law is on the books, just because I happen to personally believe that this is all a lot of folderol that we shouldn't have to go through, I believe that since I took an oath to uphold the law then it's up to me to uphold it.

Representative REUSS. That's where you and I need a little more conversation. Sure, there's a law that they have to file tariffs, but why not let them file them and arrange for some system so that the citizens are informed of what's going on? Why should you and the taxpayers pay for new additional examiners to go through all these papers?

Mr. TAYLOR. The fact of the matter is, I don't think we're going to have any new examiners.

Representative REUSS. Then why are you asking for them?

IMPORTANCE OF TARIFF EXAMINERS

Mr. TAYLOR. We asked for them in the first place so we could have even the most cursory examination. It's sort of like the IRS announc-

ing to the world that they are never going to audit a tax return again. You can imagine the kind of garbage you're going to get back.

The carriers know we don't examine tariffs. The shippers know it. Congress knows it. If that's going to continue and we're not even going to look at one out of every 500, on the most restricted confined basis, then I submit to you that I should come to Congress and suggest the elimination of the tariff filing requirement, because to allow carriers to file whatever they please and the ICC to have no rein on it whatsoever, and then also, by virtue of the filing, to have it appear to the shipper that the Commission has put its "Good Housekeeping" seal of approval on that filing, I think is the worst of all worlds.

Either there should be some indication in the public's mind that at least a cursory examination now and again, on a very sporadic basis is going on, or we ought to tell the world, no, we're not going to look at the tariffs again, so let's change the law.

ICC SHOULD CLARIFY TARIFF EXAMINATION POLICY

Representative REUSS. Well, there's a third thing that could be done. Why don't you and I announce to the world, shippers and everybody else, that, sure, the existing fuddy duddy law does require the filing of a tariff. But under existing practice, when a trucker wants to file a new tariff, it pretty much goes unchecked until somebody raises the question with the ICC. Therefore, it isn't a "Good Housekeeping" stamp of approval. It is merely a residuary safeguard a citizen may take advantage of.

Will you now join me in such a manifesto to the American people? That would clear up the whole thing and save a lot of money.

Mr. TAYLOR. Let me just say this, Mr. Chairman. At the present time, as in the enforcement area, we haven't had the time or chance to specifically formulate exactly what we're going to do. I haven't even been at the Commission 5 months yet, and I have had so many things to do with only three other Commissioners. Further, we didn't know until just a little while ago what kind of budget we were going to have. We didn't know whether OMB was going to come along. We were in fiscal 1982 and we didn't know whether OMB was going to put an employee ceiling on us. I have not been able to make any specific plans in either the enforcement or tariff examination area because we haven't known what our resources for this present current fiscal year will be.

So the fact of the matter is that I would be more than happy to take your suggestions to heart. I will sit down and discuss them with Mr. Foley and maybe we can work something out. I'm certainly not going to have people doing anything down there that is simply just to go through a high school format. I'm not interested in that any more than you are.

Representative REUSS. Good for you. And I think your new decision, if it is one—and I hope it is—will be good not only for the country but for yourself personally, because you try to take on all these nickling pedantic little bureaucratic decisions. That's not only going to be bad for the country but bad for your own peace of mind and good humor, which I'm glad to see is simply excellent.

Mr. TAYLOR. Thank you.

Representative REUSS. Humor is a good thing to have in your job. As Moses found out early in his administrative career, if you try to do everything, you become a mental case. So he wisely—indeed, in the appropriate scriptures, which I'm sure you have—decided to shuck all of this piddling little bureaucratic stuff and address himself to the big issues. And I have high hopes that that's what you're in the course of doing.

Let me just conclude this very constructive session by saying do the best you can with what you've got. Now I thought that the act of 1980 was an improvement. Even with its imperfections, somebody who really wants to follow the gospel according to Ronald Reagan, as professed to the Farm Bureau, can do so. I would hope that if you can't extract any advice from Martin Anderson at lunch, let's you and I have lunch one day.

Mr. TAYLOR. I'd love to.

Representative REUSS. And I'll be most outgoing.

Mr. TAYLOR. Very, very good. I'd love to do that. I mean it.

Representative REUSS. Outgoing as you have been, and I'm grateful to you. I know that you have to get back to the other committee. Thank you very much, unless you have something more.

Mr. TAYLOR. No, I really have nothing more to add. Thank you very, very much. I appreciated being here.

Representative REUSS. Thank you.

I'm now going to ask the jury to reassemble. I don't know whether you can wait, Mr. Taylor. You're excused. I'm going to ask the panel to come back and comment on what you said, and you're certainly invited to stay and comment on their comments.

Mr. TAYLOR. Well, if we get finished over there I will try and return, and I'll certainly ask Mr. Shepherd to stay and keep me advised.

Representative REUSS. Thank you very much.

Mr. TAYLOR. And seriously, I will call you for lunch as soon as there's a mutually convenient date.

Representative REUSS. Mr. Kahn needs to catch a plane, so I ask you to comment first. This resumed session is purely to give members of the panel a chance to comment on what Chairman Taylor had to say.

Mr. KAHN. I apologize for having to run, but I must in a moment. I would like to put some questions out on the basis of having heard the Chairman speak, and then hope that you will have an opportunity to examine them further.

ENFORCEMENT WORKS AGAINST COMPETITION

My first observation is the enthusiasm that the Chairman expresses for enforcement. In setting forth in his prepared statement his agenda, "enforcement" appears four or five times out of six. At the CAB, enforcement means prohibiting price competition. It meant examining every tariff, every price charge, and making sure there was never a deviation from the tariff. That's a very good way of preventing price competition and I would hope you would find out what that enforcement intention really means.

FIFTH CIRCUIT DECISION SHOULD BE APPEALED

Second, the Chairman said they are still considering appealing the decision of the fifth circuit court, yet later he several times alluded

to that opinion in support of his judgments that the preceding Commission had gone too far.

Now I invite your attention to that opinion. There are places in which it seems to say that nobody should be able to get a certificate who is not fit, willing and able—in the sense of already having all the equipment and facilities required to provide all the service for which authority is being requested. So there are elements of this decision which seem to be flagrartly anti-competitive, and I think the Commission should appeal it.

"PREDATORY" PRICING CONCERNS ARE MISPLACED

Third, I find ominous his emphasis on the danger of predatory pricing, the danger of discriminatory pricing. I find ominous the Chairman's dissent in that Roadway Express case. They did, in fact, supply an answer. I read it. It said, to me, unless it was rebutted, their contested discounts could not possibly have been predatory. It did refer to the airline industry and to grocery stores. Those are not irrelevant. Those are perfectly good examples of how competition can be working on a promotional basis without injuring the effectiveness of competition in the industry.

Fourth, he said we have the finest transportation system in the world. If so, why does he want to change it?

And then, we get to this whole seal of approval business and you said it better than I could. I totally agree with your drift. This is not the IRS, because IRS returns are not available to the public and in that case, of course, the IRS must check. Here's a case in which, as you pointed out, the rates to be charged are known to the public and the public can complain if it wants to.

I apologize for having to run and having the last word, but it's nice to have the last word.

Representative REUSS. Thank you. We appreciate it.

Mr. Alexis.

Mr. ALEXIS. Thank you, Mr. Chairman.

RESPONSE TO CERTAIN STATEMENTS OF CHAIRMAN

I would like to comment on several aspects because Chairman Taylor did take the time out to refer to me by name. I would like to say that in my earlier comments I referred to him as a likeable, affable chap. I hope that what we have seen today is not his conversion to a character assassin. He has said things in defense of himself and his meetings at the White House and referred to others' statements as falsehoods. I must now categorize as an outright falsehood the statement that he made that I circulated a harm standard or I advocated one when I was Acting Chairman.

The ICC correspondence on the harm standard will show that I in fact did not support the harm standard that he was referring to. What I tried to do as Acting Chairman was to try to reformulate the harm standard. That is error No. 1.

Error No. 2 on tariff filings, at no time did I ever tell any member of the Commission in February, March, April, May or June of 1980 when I was Acting Chairman, that he(she) should take tariff filings which were known to be illegal and file them anywhere. In fact, I never

was asked by any staff member what to do with a tariff filing and probably for good reason.

CHAIRMAN DOES NOT DESERVE CLAIMED CREDIT

Let me also point out that the Chairman has displayed a capacity for taking credit for that which he has not accomplished. All of the points at various points in his prepared statement—all of those beneficial effects of the Motor Carrier Act can be found in my testimony before the oversight committees of the House and Senate last June. I do not want anybody to get the wrong impression that these are discoveries or findings or results that were achieved under the Taylor administration. I'm not one who takes pride of authorship. But if these results are good, let me state that I said them first.

Mr. Taylor also refers to what has been accomplished in the minority hearings. I want to say that I originated and chaired those hearings in nine cities throughout the United States and participated in them with Commissioner Gilliam before Mr. Taylor became a member of the Commission; that the hearings write-up was published before he came to the Commission.

I would also say I must claim some credit for whatever happened to improve the climate for minorities. Indeed, the Minority Trucking Transportation Development Corp., just last month gave me its president's award for my contributions toward improving the status of minorities in transportation. I must say that since there's nothing I can do for them now, I am particularly pleased about that.

Mr. Taylor also takes credit for ICC support for broad entry and exit for buses. In testimony last spring before the Committee on Public Works and Transportation, the Commission submitted a proposed bill with broad support for ease of entry and exit which essentially contained all of the points that the chairman now tells us is in the bill he's working with the Congress on. Indeed, I personally went further and supported a Department of Transportation measure which would have totally deregulated the busing industry.

STATISTICS ON GRANT APPROVAL ARE MISLEADING

I would also like to comment on the statistics on grants that the chairman gives and point out that they are particularly misleading. You will notice the statistics say "in whole or in part." The "in part" is particularly interesting. In the ways in which those grants have been restricted, in the ways in which they have been limited by geography, in the ways in which the commodity descriptions have been limited, and in the plant site restrictions imposed upon them. These are the ways in which these grants have been issued "in part."

There may be a numerical similarity between what went on when I was at the Commission and what is going on now, but that similarity is purely superficial. Quantities may be similar, but the quality of grant has deteriorated and I would challenge anybody to question that.

Now there's also some noncomparabilities with respect to the dates because if you look at the dates in his table, what you will find is

you're looking at the period July 3, 1980 through June 30, 1981. There is a start-up period with applications flowing in, and there is also a start-up period in which a number of the proceedings implementing the act had not been concluded by the Commission. Therefore, the flow of applications responsive to the Motor Carrier Act did not really begin until September or October of 1980. So these figures look comparable but they are really comparing apples and oranges. They are not the same thing by any means.

"FIT AND ABLE" STANDARD WOULD BE RESTRICTIVE

I would also say that the change in the entry requirements proposed or supported by the chairman of the ICC's news release in his statement which would put indications of the fitness of the candidate—emphasis on such things as financial, operational, and safety, fitness—would in fact be more restrictive than the present standard in the 1980 Motor Carrier Act and would be a step backward.

Furthermore, I think it's a cop-out to argue that the Commission does not have sufficient jurisdiction under the present legislation to move in the directions of eased entry in the Motor Carrier Act.

Those are the comments I would like to make, Mr. Chairman.

Representative REUSS. Thank you very much, Mr. Alexis.

Mr. Moore.

Mr. MOORE. Well, I would like to start off by endorsing most of the comments that Marcus just gave and Alfred Kahn made. What I found, however, upsetting about Mr. Taylor's testimony was his failure to understand how the trucking industry works or would work in an unregulated environment.

BIG FIRMS WILL NOT TAKE OVER UNDER DEREGULATION

He referred to predatory pricing. He talked about big truckers taking over the industry and only the big shippers would benefit, etc., and this is not the way an unregulated trucking industry has operated. I'm not talking about theory now. I'm talking about in fact practice.

We have unregulated trucking in the United States in agriculture, in New Jersey, in elements elsewhere. New Jersey is not dominated by a handful of big trucking companies nor is agricultural trucking. Great Britain deregulated in the early 1970's and they have not been taken over by a handful of big trucking companies, nor do the small shippers suffer. Small shippers do not suffer in New Jersey.

The arguments about predatory pricing are simply a method of preventing price competition and in fact the dissent which you quizzed him about is a perfect example where there was a price competition developing and he was opposed to it and I endorse what you said.

WHITE HOUSE IN FAVOR OF MORE COMPETITION

Finally, I might add that while I don't know what Mr. Meese told Mr. Taylor in the White House, I do understand the Department of Transportation has filed with the Commission pointing out what the

administration's views are in this area and let me—I'm sorry Mr. Taylor has left, but his representative is here. Let me just assure him from my contacts with the people high in the White House staff, they are in favor of competition and not what he is doing. Thank you.

Representative REUSS. Thank you very much.

Mr. Trantum.

CHAIRMAN TAYLOR'S DISSENT ON COURT DECISION SEEMS INCONSISTENT

Mr. TRANTUM. I'll make this brief. First of all, let me say I was very, very encouraged by what Chairman Taylor had to say in terms of supporting competition and supporting the implementation efforts that the Commission went through and following up on that, I was a little bit surprised that Chairman Taylor, himself, voted against the Supreme Court review of the fifth circuit decision. It seems to me that that's not quite consistent.

DATA ON GRANTS

I'd also like to indicate that that implementation program that the Commission promulgated in 1980 was voted unanimously and in a then Commission that was composed of four Republicans and two Democrats.

I'd like to underline what Marcus Alexis said about nationwide grant of route authority and make it absolutely clear that the committee understand that many of those figures include authority that has been narrowed down to where a carrier could service one shipper to all points in the United States rather than all shippers to all points. There's a substantive difference between the two, as I'm sure you'll note.

ICC BUDGET SHOULD BE REDUCED

Finally, I must mention, because I spent so much time on it, the ICC budget which Chairman Taylor singled me out on. I spent a great deal of personal time going through the agency from top to bottom and from bottom to top and trying to make a determination as to what activities the agency does that is not required by the statute.

We came up with numbers actually that were lower than the ones I proposed, but I proposed reducing the agency to 1,000 employees at a $50 million level. Every director and office head within the agency, with the exception of one, agreed with my analysis. Both the House and Senate Appropriations Subcommittees thought highly enough of my analysis to do a great deal of work on it, and all those numbers are on the record and certainly available.

I thank you very much.

DEREGULATION HAS BIPARTISAN SUPPORT

Representative REUSS. I thank you and I want to express to the panel my gratitude not only on the part of this committee but on the part of the American people for the contribution they have made. It is not insignificant that this panel, purely by happenstance—we really didn't try to arrange it that way—is truly bipartisan. We have a

Republican commissioner and a Democratic commissioner and a Republican economist and a Democratic economist. And all of them have, with great unanimity, suggested that of all the roles for Government we don't need in this inflationary era, it's a role in which the Government hurts competition, hurts price lowering, that engenders energy waste. So you have made a real contribution. I hope the lesson will not be lost upon the interested Interstate Commerce Commission and it certainly hasn't been lost on this committee.

Gentlemen, we are grateful to you, and if there are no further statements, the committee will now stand in adjournment.

[Whereupon, at 12:40 p.m., the committee adjourned, subject to the call of the Chair.]

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